

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

No. 54

CARL BRADEN, PETITIONER,

vs.

UNITED STATES.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT

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[fol: A]

**IN UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT**

CAPTION

Pleas and Proceedings had and done at a regular term of the United States Court of Appeals for the Fifth Circuit, begun on the first Monday in October, A. D., 1959, before the Honorable Joseph C. Hutcheson, Jr., the Honorable Ben F. Cameron and the Honorable Warren L. Jones, Circuit Judges:

CARL BRADEN, Appellant,

versus

UNITED STATES OF AMERICA, Appellee.

Be It Remembered, That heretofore, to-wit, on the 28th day of May, A. D., 1959, a transcript of the record in the above styled cause, pursuant to an appeal from the United States District Court for the Northern District of Georgia, was filed in the office of the Clerk of the said United States Court of Appeals for the Fifth Circuit, said appeal having been docketed on the 25th day of March, A. D., 1959, in said Court of Appeals as No: 17705, as follows, to-wit:—

[fol. 1]

**IN UNITED STATES COURT OF APPEALS,
FOR THE FIFTH CIRCUIT**

No. 21757 (2 U.S.C. 192).

UNITED STATES OF AMERICA,

versus

CARL BRADEN.

**APPELLANT'S DESIGNATION OF PORTIONS OF RECORD
TO BE PRINTED—Filed May 29, 1959**

The Appellant herein considers that the whole of the record is not necessary to be considered by the Court, and in accordance with the provision of Rule #23 files this his request that only designated portions thereof be printed, to-wit:

- (1) The indictment, Counts 1 to 6, both inclusive.
- (2) Defendant's motion to dismiss and the Court's ruling thereon.
- (3) Defendant's motion for Bill of Particulars.
- (4) The Government Bill of Particulars.
- (5) Minutes showing arraignment and plea of not guilty.
- (6) Minutes of trial.
- [fol. 2] (7) Defendant's motion for judgment of acquittal and the Court's order denying the same.
- (8) Defendant's written requested instructions and the Court's action thereon.
- (9) Verdict of jury, judgment and sentence.
- (10) Stenographic transcript of the evidence, and all motions and rulings made orally at trial, and the entire charge of the Court. (Omitting arguments of counsel.)

(11) The following exhibits only, referred to at #1, page 15 of the stenographic transcript, #2 page 15 thereof, #3 page 15 thereof, #9 pages 18-19 thereof, but only the following portions from "Wednesday July 30th, 1958" on page #6 of the Exhibit to line of asterisk on page 20 thereof.

(12) This designation and statement of points filed herein.

(13) Motion in arrest of judgment and Court's order denying the same.

(14) Notice of appeal.

John M. Coe, Appellant's Attorney; Leonard B. Boudin, Appellant's Attorney; Conrad J. Lynn, Appellant's Attorney; C. Ewbank Tucker, Appellant's Attorney.

[fol: 3] . Certificate of service (omitted in printing).

IN UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

CROSS-DESIGNATION OF PORTIONS OF RECORD TO BE
PRINTED—Filed 6/3/59

The United States of America, appellee, acting by and through counsel, hereby requests that the following portions of the record, not designated for printing by appellant, be printed pursuant to Rule 23 of this Court, to-wit:

1. Pages 3 through 6 of U.S. Exhibit No. 9, entitled "Proceedings against Carl Braden", beginning on Page 3 with "Tuesday, July 29, 1958", and ending with "the security of this great Nation" at the top of Page 6. (Also the rest of said Exhibit No. 9 previously designated for printing by appellant, being the rest of Page 6 through the asterisks on Page 20.)

2. The opening statements of both counsel for the government and of counsel for the defense, being Pages 2 through 14 of the trial transcript.

[fol. 4] 3. The exceptions to the charge by appellant appearing on Pages 125-126 of the trial transcript and the re-charge of the Court appearing on Pages 126 and 127 of the trial transcript.

4. The opening and concluding argument by Government counsel, and the concluding argument of defense counsel, appearing at Pages 90 through 109 of the trial transcript.

Counsel for appellee believe that the above designated portions of the record should be printed and are necessary for a complete consideration by this Court of the questions involved in this appeal, and particularly with reference to Point 4 of the Statement of Points heretofore filed in this appeal by the appellant.

Appellee, while not designating for printing the other U. S. Exhibits introduced into evidence by the government because of their length, and because the trial Court directed that they be forwarded as original exhibits, does not waive its contention that said Exhibits are material to the issues, and to the finding of the Court on the question of actual pertinency, and appellee requests the Court to consider such Exhibits as evidence, even though they are not designated for printing by either party herein.

Charles D. Read, Jr., Acting United States Attorney;
J. Robert Sparks, Assistant United States Attorney;

[fol. 5] Certificate of service (omitted in printing).

[fol. 6]

IN UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

[Title omitted]

INDICTMENT—Filed December 2, 1958

The Grand Jury Charges:

On July 30, 1958, in the Atlanta Division of the Northern District of Georgia, a subcommittee of the Committee on Un-

American Activities of the House of Representatives was conducting hearings, pursuant to Public Law 601, Section 121, 79th Congress, 2d Session (60 Stat. 828), and to H. Res. 5, 85th Congress.

Defendant, Carl Braden, appeared as a witness before that subcommittee, at the place and on the date above stated and was asked questions which were pertinent to the question then under inquiry. Then and there the Defendant knowingly, wilfully and unlawfully refused to answer those pertinent questions. The allegations of this introduction are adopted and incorporated into the counts of this indictment which follow, each of which counts will in addition merely describe the questions which were asked of the Defendant and which he refused to answer.

Count One.

And did you participate in a meeting here at that time?

[fol. 7]

Count Two.

Who solicited the quarters to be made available to the Southern Conference Educational Fund?

Count Three.

Are you connected with the Emergency Civil Liberties Committee?

Count Four.

Did you and Harvey O'Connor, in the course of your conference there in Rhode Island, develop plans and strategies outlining work schedules for the Emergency Civil Liberties Committee?

Count Five.

Were you a member of the Communist Party the instant you affixed your signature to that letter?

Count Six.

I would just like to ask you whether or not you, being a resident of Louisville, Kentucky, have anything to do there with the Southern Newsletter?

[fol. 8] A True Bill

C. D. LeBey, Foreman.

At Atlanta, Georgia.

James W. Dorsey, United States Attorney; J. Robert Sparks, Assistant United States Attorney.

IN UNITED STATES DISTRICT COURT

MOTION OF DEFENDANT TO DISMISS INDICTMENT—
Filed January 12, 1959

Defendant moves that the indictment herein and each count thereof be dismissed on the following grounds:

1. The indictment does not state facts sufficient to constitute an offense against the United States.

2. The indictment shows upon its face that the questions asked, which the Defendant is charged with refusing to answer, relate to political beliefs, association and kindred matters, inquiry as to which the committee is not empowered to make, because of the provisions of the 1st Amendment to the Constitution of the United States securing the freedom of speech, press, assembly and petition.

[fol. 9] 3. The indictment omits an essential element of the alleged offense in that it fails to state the respect in which it is claimed that the questions put to Defendant which he refused to answer were material and relevant to the inquiry of the congressional committee before which Defendant testified.

4. The statute and resolution creating the Committee of Un-American Activities of the House of Representatives and committing certain matters of inquiry thereto are invalid as applied in the present case; and United States

Code, Title 2, Sec. 192, can not be constitutionally applied to punish the withholding of testimony from said committee.

John M. Coe, 205-206 Bell Building, Pensacola, Florida; Leonard B. Boudin, 25 Broad Street, New York 4, New York, Attorneys for Defendant.

[fol. 10]

IN UNITED STATES DISTRICT COURT

MOTION OF DEFENDANT FOR BILL OF PARTICULARS—
Filed January 12, 1959

The defendant moves that the Court order the United States to file a bill of particulars setting forth the following:

1. State the question under inquiry as to which each of the questions set forth in Counts One through Six is alleged to be pertinent.

2. State the manner in which each of the questions set forth in Counts One through Six is alleged to be pertinent to the question under inquiry referred to in item 1 above.

Dated, Pensacola, Florida, January, 1959.

John M. Coe, Leonard B. Boudin, Attorneys for Defendant.

[fol. 11]

IN UNITED STATES DISTRICT COURT

MINUTE ENTRY OF ARRAIGNMENT AND PLEA—
January 12, 1959

Came the United States by counsel, James Robert Sparks, Assistant United States Attorney, and came the defendant in person and by counsel, John M. Coe, Esq.

Whereupon counsel for defendant presented a motion to dismiss which was taken under advisement by the Court.

The following plea was entered, to wit:

Plea.

I, Carl Braden, defendant, having received a copy of the within Indictment and having waived arraignment, Plead Not Guilty thereto.

In Open Court this 12 day of Jan., 1959.

Carl Braden, Defendant.
John M. Coe, Attorney for Defendant.

[fol. 12]

IN UNITED STATES DISTRICT COURT

BILL OF PARTICULARS BY PLAINTIFF—Filed January 16, 1959

Now comes the United States of America, acting by and through counsel, and in response to Request No. 1 of the Motion for Bill of Particulars filed by the above-named defendant on January 12, 1959, files this its Bill of Particulars as to the information sought in said Request No. 1, as follows:

I.

The question under inquiry by the Sub-committee of the House Committee on Un-American Activities, on July 30, 1958, as alleged in the indictment, as to which each of the questions set out in Counts 1 through 6 of this indictment is alleged to be pertinent, was:

"The extent, character and objects of Communist colonization and infiltration in the textile and other basic industries located in the South, Communist Party propaganda activities in the South, and entry and dissemination within the United States of foreign Communist Party propaganda."

Charles D. Read, Jr., Acting United States Attorney;
J. Robert Sparks, Assistant United States Attorney.

[fol. 13]

IN UNITED STATES DISTRICT COURT

ORDER OVERRULING MOTION TO DISMISS—January 19, 1959

The defendant has filed a motion to dismiss the indictment in the above case on several grounds and this motion is now properly before the Court for determination under the Local Rules of this Court.

After due consideration of the motion and the several grounds thereof, and of the briefs in support and opposition thereto, the Court concludes that the indictment is sufficient under the provisions of the Federal Rules of Criminal Procedure and it is therefore.

Ordered that defendant's motion to dismiss be, and the same is hereby overruled and denied.

This the 19th day of January, 1959.

Boyd Sloan, United States District Judge.

IN UNITED STATES DISTRICT COURT

MINUTE ENTRY OF TRIAL

The United States appeared by counsel, James Robert Sparks, Assistant United States Attorney, and the defendant appeared in person and by counsel, John M. Coe and Leonard B. Boudin, Esqs.

[fol. 14] Issue having heretofore been joined, the Court qualified all jurors for cause and verbally ordered that a jury be called to try said issue.

After counsel had exercised all peremptory challenges, the jurors selected to try said issue came, to wit:

1. Eugene Franklin Adams.
2. W. M. Blackmon.
3. W. D. Flowers.
4. S. G. Selers.
5. William H. Golden.

6. John W. Ficken.
7. Forrest C. Castellaw, Jr.
8. T. Henry Fitzpatrick.
9. Warren C. Childs.
10. Sidney S. Johnson.
11. Walter J. Brooke.
12. A. G. Moser.

Whereupon they were regularly impaneled and sworn by Johnny L. Pressley, Deputy Clerk.

[fol. 15] The following witness was sworn by Johnny L. Pressley, Deputy Clerk; to wit: (1) Richard Arens.

The rule was invoked and the following evidence was introduced:

By the United States: Documentary evidence: U. S. Exhibits Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, ~~14~~, 15, 16, admitted.

Witness (1) Richard Arens.

~~Government~~ Rested.

There was no witnesses by defendant.

Defendant Rested.

Whereupon counsel for defendant submitted to the Court a written motion for a judgment of acquittal. After counsel for defendant had made verbal arguments in support of said motion, the Court verbally overruled the written motion.

Evidence Closed.

The evidence having been adduced in full, and after argument of counsel to the jury on the merits of the case, the charge of the Court was delivered. Exceptions to charge by defendant were noted and allowed.

Whereupon the jury retired to their room and entered upon their deliberation.

[fol. 16]

IN UNITED STATES DISTRICT COURT

VERDICT—January 22, 1959

We, the Jury, find the defendant Carl Braden Guilty on Count One; Guilty on Count Two; Guilty on Count Three; Guilty on Count Four; Guilty on Count Five; Guilty on Count Six.

This the 22 day of January, 1959.

John W. Ficken, Foreman.

Imposition of Sentence deferred to Enlarged Remanded Pend.

Report of Prob. Off.

IN UNITED STATES DISTRICT COURT

MOTION OF DEFENDANT FOR JUDGMENT OF ACQUITTAL—

Filed January 22, 1959

The Defendant moves the Court for a judgment of acquittal because:

(1) The evidence fails to establish any facts constituting the offense charged.

[fol. 17] (2) The evidence shows that the questions asked which the Defendant refused to answer, related to political speech, writing, association and kindred matters; inquiry as to which the Committee on Un-American Activities of the House of Representatives of the United States was not empowered to make, because of the provisions of the First amendment to the Constitution of the United States securing the freedom of speech, press, assembly and petition.

(3) The evidence fails to show that the questions asked which the Defendant refused to answer were pertinent or relevant to the subject matter of the investigation set forth in the bill of particulars, and that such relevancy and pertinency was shown to the Defendant at the time of the Committee hearing.

(4) That the evidence shows that the statute and resolution creating the Committee on Un-American Activities of the House of Representatives of the United States and committing certain matters of inquiry thereto are invalid as applied in the present case; and United States Code Title #2 Sec. 192 can not be constitutionally applied to punish this defendant for the withholding of the testimony sought by the said committee.

John M. Coe, Attorney for Defendant; Leonard B. Boudin, Attorney for Defendant.

[fol. 18]

IN UNITED STATES DISTRICT COURT

DEFENDANT'S REQUESTED CHARGES

(1) The Court charges you that you cannot find the Defendant guilty unless you find from the evidence beyond a reasonable doubt that he refused to answer the question or questions set forth in the indictment, and that such question or questions, being pertinent to the question under inquiry by the Committee therein described as the Court has charged you, that such pertinency was made known with reasonable certainty to the Defendant at the time.

(2) The Court charges you that to be pertinent to a question under inquiry within the meaning of the law and the charges in the indictment, the questions asked must be have been known by the Defendant at the time of the Committee's hearings in Atlanta to have had a reasonable relation to some the subjects of legislative inquiry, allegedly under inquiry as as to which the Congress of the United States has power to legislate and the Committee asking the questions has power to investigate must have had power set forth in the Bill of Particulars.

(3) The Court charges you that under the First amendment to the Constitution of the United States, it is provided that "Congress shall make no law—abridging the freedom of speech or of the press; or the right of the people peaceably to assemble and to petition the government for a redress of grievances", and any inquiry undertaken by

any Committee of the Congress, or either house thereof, looking to the making of any such law is a void inquiry, [fol. 19] and no question asked in such inquiry is pertinent to a question properly under inquiry, and if on its face a question propounded to the witness falls within such prohibited area of inquiry, he is not punishable for refusal to answer it unless it is then and there made known to him as a reasonable man that facts and circumstances exist rendering it pertinent notwithstanding such constitutional prohibition.

John M. Coe, Attorney for Defendant; Leonard B. Boudin, Attorney for Defendant.

IN UNITED STATES DISTRICT COURT

Proceedings before the Honorable William Boyd Sloan, Judge, at Atlanta, Georgia.

Transcript of Proceedings—January 22, 1959

APPEARANCES OF COUNSEL:

For the Government: Robert Sparks, Esq.

For the Defendant: John M. Coe, Esq., Leonard Boudin, Esq.

The above-named case having come on for trial by jury, jurors were qualified, jury duly impaneled, sworn, witness sworn, rule was invoked.

The Court: All right, Mr. Sparks.
[fol. 20]

STATEMENT OF COUNSEL FOR PLAINTIFF

Mr. Sparks: If Your Honor please, gentlemen, my name is Bob Sparks. I am Assistant U. S. Attorney here in Atlanta. My home is in Greenville, Georgia, about 60 miles south from here down in Merriwether county. I state that by way of introduction for those of you whom I may not know.

I am going to be presenting the case for the government assisted by Mr. Ralph Ivey, Assistant U. S. Attorney from Rome, Georgia, and perhaps Mr. John Stokes who is also Assistant U. S. Attorney from Atlanta.

This case involves an indictment against Carl Braden in six counts. I want to tell you just briefly what the government expects to prove in this case. My statement to you is no evidence and should not be construed as evidence by you. It is merely a statement of what I expect to prove and if I do not prove it or fail in any particular respect, of course, you will disregard anything that I say. We expect to show that on July 30, 1958 in the Atlanta Division of the Northern District of Georgia, in fact, in this very Courthouse building here, that a subcommittee of the Committee on Un-American Activities of the House of Representatives of the United States Congress was conducting hearings on the subject, the extent, character and objects of communist colonization and infiltration in the textile and other basic industries located in the South, Communist Party propaganda activity in the South, and the entry and dissemination in the United States of foreign Communist Party propaganda.

We expect to show that the defendant, Carl Braden, appeared as a witness before that sub-committee here in Atlanta and was asked six questions which were pertinent to the question under inquiry which I have just recited to you, and that he did on six different occasions in answer to six different questions refused to answer those pertinent questions.

These questions are:

"And did you participate in a meeting here at that time?" That refers to a meeting in Atlanta, Georgia at the Red Cross Building in 1957, if my memory is correct.

Count Two: "Who solicited the quarters to be made available to the Southern Conference Educational Fund?" That question, if my memory is correct, relates to the same meeting here in Atlanta as to who procured the quarters for this meeting of the Southern Conference Educational Fund which did hold a meeting here in the Red Cross Building in Atlanta.

Count Three: "Are you connected with the Emergency Civil Liberties Committee?"

Count Four: "Did you and Harvey O'Connor in the course of your conference there in Rhode Island develop

plans and strategies outlining work schedules for the Civil Liberties Committee?" That question refers to a meeting between the defendant and Mr. Harvey O'Connor, one Harvey O'Connor, in Rhode Island of which there will be further evidence.

Count Five: "Were you a member of the Communist Party the instant you affixed your signature to that letter?" That letter referred to, we expect to show is a letter signed [fol. 22] Carl and Ann Braden, addressed to "Dear Friend", circulated or purportedly circulated protesting against various activities. This letter "Dear Friend", we expect to show was signed Carl and Ann Braden, Field Secretaries, is a letter which purportedly was circulated opposing several laws which were pending, proposed legislation pending in Congress relative to the state sedition laws.

Count Six: "I would just like to you whether or not, you being a resident of Louisville, Kentucky, have anything to do with the Southern Newsletter?" The pertinency of that will be brought out during this hearing.

Gentlemen, a case like this, which is a very rare type of case to be tried in Georgia, there are certain points in the trial which, by rule of law which have been handed down by the Appellate Courts, the government will have to ask that the jury be excused from the Courtroom while certain evidence is introduced in your absence. Now, that is not any desire on the part of the government to conceal any part of the case from you but by law certain questions are matters for Judge Sloan to decide, for the Court to decide. Other questions will be submitted for your decision.

Now, we expect to carry the following burden. This is the burden that's on the government so far as the questions which you will have to decide in this case in determining the guilt or innocence of Carl Braden. We have to show that he did refuse to answer the six questions. We would have to show that that act took place in the Atlanta Division of the Northern District of Georgia. We will have to [fol. 23] show that it was a wilful refusal, not a refusal caused by a mistake on his part, a misunderstanding of the question or a misunderstanding of the fact that he had been

ordered to answer the question. Then we must show, if we show those three things, we must show that the pertinency of that question was made sufficiently clear to him.

By pertinency, of course, we mean relevance to the matter that the congressional subcommittee was investigating here, that it was made sufficiently clear to him that he or a reasonable man in his circumstances knew or should have known that the question was pertinent. Whether the question was pertinent or not is not a question for your consideration. That is a question which will be determined by the Court. The actual pertinency of the questions will be decided by the Court. Your task in relation to pertinency will be to decide whether the witness knew or should have known whether the questions were pertinent when he refused to answer them.

Finally we must show that a quorum of the committee was present at all times, that is, at all times during his testimony. I anticipate no trouble there because the defense and the government have stipulated that a quorum was present, so you will not be concerned with the quorum question. You still have to find it is a fact, but I don't think there will be any dispute as to the fact that there was a quorum present at all times.

We expect to show that he appeared here in Atlanta accompanied by counsel, one of my distinguished opponents, Mr. John M. Coe from Pensacola, Florida was present with him at the hearing and also representing him at this trial.

[fol. 24]. We expect to show that he started off answering the questions of the committee relatively freely when they were about insignificant matters, but when certain fields or certain questions were reached he declined to answer on the ground that the questions were not pertinent and invoking the protection of the First Amendment to the United States Constitution.

We expect to show that the pertinency of these questions was explained to him both by Mr. Arens, the staff director of the committee, and in some part by other members of the committee.

We expect to show that he was firmly and fully directed to answer the questions and stated that he knew that he had been directed to answer the questions.

And then we expect to show that he wilfully refused to answer these questions.

If we carry that burden, the government will insist that a verdict of guilty be returned on all six counts.

STATEMENT OF COUNSEL FOR DEFENDANT

Mr. Coe: If the Court please, and you gentlemen, I am John Coe from Pensacola and my associate is Leonard Boudin from New York. We are representing Mr. Braden in this case against him.

The case has been fairly stated by counsel for the government. We do not expect to interpose any technical defenses. The committee of the Congress was constituted, the subcommittee was duly constituted and they were sent into the State of Georgia pursuant to a resolution for the purpose of making the investigation which he has stated. They called Mr. Braden before them and Mr. Braden answered fairly and courteously the questions which were propounded [fol. 25] to him until those questions entered an area which he took to be protected by the First Amendment. That is to say, the provisions of the Constitution which secures a man's freedom of speech, freedom of write, freedom of the press and freedom to petition the government.

As the counsel for the government has properly stated, the question of whether or not those questions were pertinent to the subject matter under inquiry has been ruled to be a question of law for the Court. But whether or not the defendant Carl Braden at the time he refused to answer those questions knew that they were pertinent to the subject matter under inquiry is a question of fact which will be submitted by the Court to you gentlemen. Whether or not the refusal of Carl Braden to answer the questions was a wilful refusal will likewise be submitted to you gentlemen. So the ultimate decision upon the questions of fact in this case will be the duty and the responsibility of this jury. Those questions we will submit to you and they will relate to each and every count of the indictment. The indictment

charges this defendant with six separate and distinct offenses. The first question which is asserted he knew was pertinent to the subject matter of the inquiry and which he contends he did not know was pertinent to the subject matter of the inquiry was the question: "And did you participate in a meeting here at that time?" The context of his testimony which will be presented to you will show that that was a meeting of the Southern Conference Educational Fund, an organization working for integration in the South, and that it met at the Red Cross Building in Atlanta. It is our belief that he did not know that that question was pertinent to the subject matter of the inquiry. However, we must defer to the ruling of the Court when it is made.

[fol. 26] The second question which they claim was pertinent: "Who solicited the quarters to be made available to the Southern Conference Educational Fund?" In other words, the Committee of the United States came down here and wanted to know who solicited the Red Cross Building. He did not know that that was pertinent to the subject matter of the inquiry.

"Was he connected with the Emergency Civil Liberties Committee?" We take the same position in reference to that.

"Did you and Harvey O'Connor in the course of your conferences there in Rhode Island develop plans and strategies outlining work schedules for the Emergency Civil Liberties Committee?" We do not think that there will be any evidence that the Emergency Civil Liberties Committee was a group of dynamiters or thugs or evil doers of any sort. We do not believe that the Emergency Civil Liberties Committee is anything except that which its name implies. We think that Carl Braden did not know that that was pertinent to any subject matter that the sovereign power was justified in inquiring about.

"Were you a member of the Communist Party the instant you affixed your signature to that letter?" Gentlemen, the inquiry as to whether or not he was a member of the Communist Party may have been pertinent to the subject matter under inquiry and under ordinary circumstances he might have understood that it was pertinent, but the par-

ticular question was involved in the right to petition Congress and the Communist Party or anybody else has a right to ask Congress to do something. Congress doesn't have the obligation to do it, but the first amendment secures [fol. 27] the right of people peacefully to assemble and petition their government for a redress of grievances. The letter to which that question relates is in the record and will be read to you and presented as a part of the government's evidence. That letter was a letter addressed to a considerable group of people throughout the South requesting that they contact their representatives in Congress and ask them to oppose the various bills which were opposed to curtail the jurisdiction of the Supreme Court. In other words, this letter that is supposed to be pertinent into an inquiry into subversion was a petition, or the first step toward presenting a petition to the Congress of the United States asking it to support the jurisdiction of the Greatest Court in the United States.

We submit, gentlemen, that Carl Braden did not know that that was pertinent to the subject matter under inquiry.

The last question, "I would like to ask you whether or not you, being a resident of Louisville, Kentucky, have anything to do there with the Southern Newsletter?" What the Southern Newsletter is, I do not know. I don't think there will be any evidence as to what the Southern Newsletter is except that it will appear in the record that somebody said that the man who issued it was a member of the Communist Party. However, whether it was part of his utterances as a Communist or whether it was some enterprise like the Kiplinger Letter or some other letter, I do not know and I do not think you will be informed. The first amendment to the Constitution of the United States secures liberty of the press as well as speech. Liberty of the press applies not only to great papers like the New York Times and the Atlanta Constitution, but it applies to the [fol. 28] most insignificant sheet that a man wants to put out to propagate truth or untruth or crack-pot ideas or anything else because it is a basic principle of the government of the United States that a sound public opinion can—

Mr. Sparks: I believe counsel is arguing his case rather than stating what the defense is, that he intends to reply upon.

The Court: It's a little hard to draw the line. I will let him proceed. Go ahead.

Mr. Coe: A sound public opinion, gentlemen, is the base from which the democratic government arises and Carl Braden thought, perhaps the Court will rule that he mistakenly thought, that that freedom of the press included the smallest newsletter as well as the great metropolitan dailies.

Gentlemen, Carl Braden is not a lawyer. He is a layman who has been a newspaperman. He is an ordinary average person. He has stated his employment as being an employee of the Southern Conference Educational Fund working for integration in the South. He has specified what his previous employment and duties have been. In light of the fact that he was not a lawyer, in the light of the fact that he was called before the committee and responded to the committee with courtesy and dignity, in the light of the fact that he stood honestly in the defense of the Constitutional Rights, we will ask you gentlemen to find that he was not in contempt of the committee and he did not wilfully refuse to obey its command.

[fol. 29] The Court: We will suspend the trial of this case temporarily and receive the verdict in another case. I will ask the jury to retire to the corridor.

(The jury retired to the corridor.)

Mr. Sparks: Before the jury is called back in, defense counsel then the government have entered into a number of stipulations designed to shorten the trial of the case. Yesterday afternoon Mr. John Coe and Mr. Leonard Boudin and I examined each of these exhibits which the government has and we reached some stipulations with reference to them. If I am incorrect in any way, I want counsel to correct me because I have rather rough notes here. It is my understanding that the accuracy and authenticity of all the documents was stipulated.

RICHARD ARENS, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Sparks:

Q. What is your name, please, sir?

A. My name is Richard Arens.

Q. And your occupation?

A. Staff Director of the House Un-American Activities Committee of the Congress.

Q. And your home is in Washington, D. C.?

[fol. 30] A. A suburb of Washington, yes.

Q. Did you occupy that same position as staff director last July 29, 30, 31, 1958?

A. Yes, sir.

Q. How long have you been with the committee, sir?

A. Approximately two and a half years.

Q. And before that, had you served with any other committees in Washington?

A. Yes, sir. Immediately prior to my assumption of my present place with the Committee on Un-American Activities; I was Staff Director of the Senate Immigration Subcommittee and also a Staff Director of the Senate Internal Security Subcommittee.

Q. Are you an attorney, sir, and what bars have you been admitted to?

A. I am. I was admitted to the Bar of Missouri, the Bar of the District of Columbia, admitted to practice in the Federal Courts, including the Supreme Court.

Mr. Sparks: If it please the Court, I should state at this time, I think, that actually and officially for the record that defense counsel and the prosecution have agreed that the question of a quorum will not be raised, that they stipulated that a quorum was present not only at the time the committee was holding its meetings here in Atlanta, but at all times referred to in the exhibit.

That's correct, is it not, Mr. Coe?

Mr. Coe: That's correct.

[fol. 31] The Court: I will instruct the jury that where counsel for the government and counsel for the defense

make such stipulations, you may accept those stipulations as true without further proof and matters so stipulated will be accepted by the jury.

By Mr. Sparks:

Q. Now, as staff director, sir, what are your duties?

A. The duties of staff director are, in general, to supervise the activities of the staff in the investigations, to handle the preparation or supervise the preparation of the reports of the committee, to direct the clerical force of the committee, to participate in the hearings of the committee, and miscellaneous activities all under the general supervision of the committee and under particular supervision of the chairman of the committee.

Q. State whether or not you then have access to all the committee has access to?

A. Yes, sir.

Q. State whether or not that information actually comes to you before the committee gets it.

A. Yes, I confer with the committee from time to time and most every day with the chairman of the committee, at which times we discuss the affairs of the committee and the information available to the committee and the like.

Q. Now, I will ask you, Mr. Arens, were you present in Atlanta on July 29, 30 and 31 of 1958?

A. Yes, sir.

Q. What was the occasion of your being here on those dates?

[fol. 32] A. The occasion was an investigation and hearing conducted here by a subcommittee of the Committee on Un-American Activities.

Q. Where was that hearing held, sir?

A. It was held in this building here, in the Courthouse.

Q. It was here in Atlanta, Georgia?

A. Yes, sir.

Q. I will direct your attention specifically to the date of July 30, 1958, and I will ask you whether or not a witness named Carl Braden appeared before the committee?

A. He did, yes, in response to a subpoena.

Q. Who was conducting the investigation, the interrogation, Mr. Arens?

A. I was.

Q. Do you see Mr. Carl Braden in the Courtroom at this time?

A. Yes, sir.

Q. Point him out, please, sir.

A. He is seated to the extreme left of the counsel table, to the left in the presence of two counsel. He wears what appears to be horn-rimmed glasses, a man of grey glasses, a man of grey hair, medium height. He is to the right of counsel who is at the center of the table.

Q. In other words, he is at the far end of the table?

A. That's correct, yes.

Q. I hand you U. S. Exhibit No. 9, sir, in case you need it to refresh your recollection and I will ask you, did you direct this question to the defendant Carl Braden "and did you participate in a meeting here at that time?"

A. Yes, sir.

Q. Did he answer the question?

[fol. 33] A. No, sir.

Q. Did you direct the question to him as follows: Who solicited the quarters to be made available to the Southern Conference Educational Fund?

A. Yes, sir.

Q. Did he answer that question?

A. No, sir.

Q. Did you direct the question to him as follows: "Are you connected with the Emergency Civil Liberties Committee?"

A. Yes.

Q. Did he answer that question?

A. No, sir.

Q. Did you ask him the question: Did you and Harvey O'Connor in the course of your conference there in Rhode Island develop plans and strategies outlining work schedules for the Emergency Civil Liberties Committee?

A. Yes, sir.

Q. Did he answer that question?

A. No, sir.

Q. Did you ask him a question as follows: Were you a member of the Communist Party the instant you affixed your signature to that letter?

A. Yes, sir.

Q. Did he answer that question?

A. No, sir.

Q. Did you ask him this question: I would just like to ask you whether or not you, being a resident of Louisville, Kentucky, have anything to do there with the Southern News Letter?

A. Yes, sir.

Q. Did he answer that question?

A. No, sir.

[fol. 34] Q. I will ask you, sir, whether or not you made any explanation to him at the beginning or near the beginning of his testimony as to the pertinency of the questions which you intended to direct to him?

A. Yes, I did.

Q. Did the chairman direct him to answer the questions?

A. Yes, sir.

Q. I direct your attention and ask you to refresh your recollection to the bottom of Page 14, U. S. Exhibit No. 9, and I will ask you, did you explain to him that the explanation of pertinency which you had given him earlier in the hearing carried over with reference to the principal questions to be asked?

A. Yes, sir.

Q. Did he indicate his understanding of it?

A. Yes, sir.

Q. Now, I will ask you also whether the chairman in your presence, to refresh your recollection, on Page 15, midway of the page, did the chairman, Mr. Willis, in your presence instruct Mr. Braden or inform Mr. Braden that the committee disagreed with his position and was insisting on the pertinency?

A. Yes, sir.

Q. Did Mr. Braden or not indicate that he understood that he was being directed to answer every question?

A. Yes, sir.

Mr. Sparks: I believe the jury can be excused at this point, Your Honor.

[fol. 35] The Court: All right, sir. Ask the jury to retire to the corridor.

(The jury retired to the corridor.)

By Mr. Sparks:

Q. Mr. Arens, I will ask you what was the purpose of this inquiry which was being conducted by the subcommittee here in Atlanta to which the questions were pertinent in your opinion and the opinion of the committee?

Mr. Coe: Now, if it please the Court, this is an organization that keeps minutes just like a corporate Board of Directors or like a Court. The purpose of this investigation is embalmed in the record and several resolutions and explanations of the chairman. I submit that the record is the best evidence of what transpired at this hearing and neither the purpose thereof or the details is proper to come from this witness.

The Court: What do you say, Mr. Sparks?

Mr. Sparks: Your Honor, the defense filed a motion for a bill of particulars as to what the subject matter under inquiry was and I am trying to prove what's in my bill of particulars.

The Court: But he only objected to it that there is a higher evidence.

[fol. 36] Mr. Sparks: If it please the Court, I think that if this witness knows within his own knowledge what the purpose of the inquiry was, that he certainly can so state.

The Court: Well, have you introduced in evidence the action of the committee in calling the Atlanta meeting?

Mr. Sparks: Yes, sir.

The Court: Does that state the purposes of the meeting?

Mr. Sparks: Yes, sir, it states the purpose.

The Court: Well, if this witness undertook to testify to a different purpose, do you contend that that would be admissible here?

Mr. Sparks: I will withdraw the question.

The Court: I think the objection is good.

By Mr. Sparks:

Q. What was the legislative purpose of the committee in holding these hearings here in Atlanta, if you know?

[fol. 37] Mr. Coe: Same objection, Your Honor.

The Court: What was the legislative purpose? How can this witness testify except from the official action of the committee itself what this purpose was?

Mr. Sparks: He can testify from his conversations with the committee, his staff work with the committee and his preparation of interrogation for these particular hearings.

The Court: Perhaps as to what they said, and then let the trial of the facts decide what they meant. If he undertakes to testify their purpose, as such, then he is going into either their official actions which is evidenced by their resolutions or what was in their minds. I think the objection is good. Sustained.

By Mr. Sparks:

Q. I will ask you, Mr. Arens, what information were you seeking on behalf of the committee with reference to what proposed legislation or actual legislation was pending?

Mr. Coe: We wish to make the same objection. It still goes to the purpose of the committee.

The Court: That question doesn't go to the purpose of the committee.

[fol. 58] Mr. Coe: If I understand the rule correctly, the information that the committee had was, the undisclosed purpose in the minds of the committee, was different perhaps from that which was disclosed from its formal action?

The Court: He didn't ask him about the purpose of the committee. He asked the witness what this witness was, as counsel for the committee, was trying to develop for the committee by that question. That is something in his mind so that he would know. I don't think that is subject to the objection made. The objection is overruled.

By Mr. Sparks:

Q. Will you answer the question, please? What information were you seeking to present to the committee as staff director in the Atlanta hearings?

A. I was seeking to—do you mean from this witness or from the whole hearings?

Q. From the whole hearings.

A. In the Atlanta hearings we sought to develop factual material respecting communist operations in the Southland, communist propaganda, communist techniques, communist infiltration, all for the purpose of having a fund of information with which the committee could appraise legislative proposals then pending before the committee either in the form of bills or in the form of suggestions and for the purpose of enabling the committee to fulfill its duty under the Legislative Reorganization Act of maintaining a continued surveillance over the administration and operation of the then existing Internal Securities Laws. [fol. 39] Q. What information were you seeking to present to the committee with reference to any particular amendment to any particular act or changes to any particular act?

A. One of the proposals which was then pending before the committee was in the form of a bill known as H.R. 9937 which, among other things, contained provisions undertaking to meet issues created by the Dates case, namely, the construction or interpretation of the word "organizing." If you want me to, I can give you a little further explanation of that, what was meant by organizing within the framework of the Smith Act.

Q. What about the Foreign Agents Registration Act?

A. Well, within the purview of H. R. 9937 there were provisions which would have amended the Foreign Agents Registration Act. It would have amended the Smith Act. It would have amended the Immigration and Nationality Act. It would have amended a number of acts, the Internal Security Act being the principal, and it would have amended by that bill in a number of particulars all dealing with communistic activities, communistic techniques, communistic dissemination of propaganda.

Q. I will ask you to just briefly summarize, if you will, the testimony which the committee received, if they did receive any from Armando Penha on July 29, 1958 here in Atlanta, Georgia?

Mr. Coe: There has already been entered in the record the complete record including Mr. Penha's testimony. I submit that is the best evidence.

[fol. 40] Mr. Sparks: I am trying to summarize it for the benefit of the Court. I don't know whether the Court has had time to read his testimony which is rather lengthy.

The Court: The objection is well taken.

Mr. Sparks: Very well.

By Mr. Sparks:

Q. I will ask you, sir, at the time that Mr. Braden was subpoenaed to appear as a witness on July 30, 1958 in Atlanta, Georgia, what information did you have about Mr. Braden which prompted you to subpoena him to appear as a witness?

Mr. Coe: I object to that as being hearsay, and, secondarily, the government has no more right to attempt to prejudice the Court than it would the jury by showing prior alleged misconduct.

The Court: One of the exceptions to the hearsay rule is that it may be shown to explain conduct. The question asked here was what was his purpose and what information he had that influenced him in calling Mr. Braden. That is, as I understand it, to show the information that he acted upon. Whether it was correct or incorrect is not proof of the information that he had. It is not proof of the facts contained in the information. It is simply an explanation of his conduct and not subject to the objection you made. Your objection is overruled.

By Mr. Sparks:

Q. Will you answer the question, please? What information did you have concerning Mr. Carl Braden, the defendant on trial, which prompted the subpoena to be issued?

A. First of all it was our information that Mr. Braden was a member of the Communist Party, that he was engaged as a communist with an organization known as the Southern Conference Educational Fund which was the subject of investigation by the Internal Security Subcommittee which found in essence that the Southern Conference Educational Fund was for all intents and purposes the

successor organization to the Southern Conference for Human Welfare which had been cited as a communist front. We had the information that Mr. Braden was a field representative for the Southern Conference Educational Fund. In that capacity he was going over the Southland covering a number of states setting up meetings, disseminating communist propaganda, doing communist work in the South. It was also our information that Mr. Braden was a contributor, a writer for a publication circulating in the South under communist auspices, known as the Southern News Letter, the driving or leading persons of which were known communists. It was our information that Mr. Braden had in the period of time, a short time prior to the time he was actually subpoenaed or a subpoena was issued for his appearance, had left Louisville, Kentucky, which was his home, had then been on a tour in furtherance of Communist Party objectives at the behest and direction of the Communist Party. He had been there in Atlanta and he had been to New Orleans and that he was then enroute to confer with another communist by the name of Harvey O'Connor who was a leading figure and is now a leading figure in another organization controlled by the conspiracy known as the Emergency Civil Liberties Committee. That conference was scheduled to take place and did take place some place in Rhode Island. There are other collateral and incidental factual items which we had, but I have given you the highlights.

The Court: The Court receives that evidence as explanation of the actions of Mr. Arens in subpoenaing that defendant, Mr. Carl Braden, as a witness and not as proof of the facts contained in the information that he stated he had upon which he acted.

By Mr. Sparks:

Q. Did you have any information relative to any specific letter or letters which Mr. Braden was circulating or purported to have circulated?

A. Yes, sir.

Q. Will you tell us about that, please, sir?

A. My recollection could well be refreshed by the record itself, but in essence it was at least one of the letters, one

of the letters was a letter signed by Mr. Braden and another person urging congressional action of some kind. My recollection isn't too vivid on the exact contents of it, but one of the letters that I have in mind on that appears in the record some place. In addition to that, within this record it appears on page 18 of the record of United [fol. 43] States Exhibit No. 9. In addition to that it was our information that Mr. Braden, and again my recollection is not absolutely clear, but it is in general that he had something to do with the preparation and dissemination of petitions which were circulated in the Southland for the purpose of precluding or attempting to preclude or softening the very hearings which we proposed to have here.

Mr. Coe: I object to that particularly to the testimony as to the petitions on the ground that that is an activity protected by the first amendment to the constitution and it can have no relevancy as a reason for execution of the investigation.

The Witness: His activity in that regard was as a communist, under communist discipline and direction.

Mr. Coe: To continue our objection, even a communist has a constitutional right to petition the government and it cannot be regarded as a crime.

The Court: Doesn't that go to the weight and effect of it rather than its admissibility?

Mr. Coe: The view I take, the protection of the first amendment is absolute.

[fol. 44] The Court: Wouldn't the letter, if it shows what he contends it shows, be itself the basis of your objection rather than the admissibility of it?

Mr. Coe: The theory of my objection is this: It is attempting to show that by reason of this knowledge the government was justified in making an investigation. I don't think the government is justified under any circumstances in making an investigation of the exercise of the right to petition whether done by a communist or burglar or whatnot.

The Court: Perhaps you don't understand. I think that really that it is admissible even though it may show, if it

does show what you contend, that the government was acting in a field that it had no right to act, in that it undertook to deal with activities protected by the first amendment, that it would, therefore, be admissible in evidence to show, even though it did show that the committee acted improperly. Now, you are objecting to it being received in evidence as a motivating factor upon which the committee acted which, if excluded, would not give the Court the right to even consider the objection you offer. I think that what you are actually doing is to say that this piece of evidence shows, if the committee acted improperly in that they were undertaking to investigate a field that is protected by the first amendment, then I think that goes to the effect of it rather than to its admissibility. [fol. 45] Mr. Coe: I understand. I will defer to Your Honor's ruling. It may do more good than harm.

By Mr. Sparks:

Q. What was your information, sir, relative to the matters concerned in the petitions you just testified about? What do they relate to?

A. It was our information that these petitions were circulated by communists as communists under communist direction and that in the process of the circulation and the procurement of the petitions, the communists were practicing a communist technique which the committee wanted information on. They were not interested in whether or not they were petitions, but our interest in presenting it to the committee was the communistic technique in failing to disclose that the solicitation of the commission was by people under communist discipline. Q

Q. I will ask you, sir, whether or not you had any information relative to the identification of Braden as a communist?

A. Yes, sir. It was my information that he had been identified as a communist.

Q. Did you have any information relative to his presence in Atlanta in December of the preceding year, 1957?

A. Yes, sir, it was my information that as a communist he in concert with at least one other person who was a communist had been in Atlanta in December of the pre-

ceding year at which time he was engaging in communist activities, part of which was to penetrate known communist organizations which was then a technique that we were undertaking to gain information about.

[fol. 46] Q. In your capacity with the committee, what information did you have relative to Mr. James A. Dombrowski, if any?

A. It was the information of the committee that Mr. Dombrowski was the chief officer of the Southern Conference Educational Fund of which Mr. Braden was a staff representative or field representative.

Q. You made reference to Mr. Harvey O'Connor. I will ask you whether or not you in your capacity with the committee had any information relative to Mr. O'Connor as to whether he was or was not a communist?

A. Yes, sir, it was our information that he was a communist, a member of the Communist Party and in that capacity he served as the principal officer of the Emergency Civil Liberties Committee.

Q. What information did you have about the activities or the function of the Southern News Letter?

A. It was our information that the Southern News Letter was communist controlled, that the man who had the principal office in it, whether he was the editor or publisher, I don't know, a man by the name of Eugene Feldman, was a communist identified repeatedly as a communist, that Mr. Braden as a communist was a participant in the affairs of the Southern News Letter and we suspected, although we did not know, that Mr. Braden in addition to contributing to the Southern News Letter had something to do with the distribution of the Southern News Letter because there was a post office box number in Louisville where Mr. Braden lived to which the Southern News Letters were sent and from which we suspected they were redistributed, that one of the things that we wanted to elicit and attempted to elicit from Mr. Braden was his [fol. 47] participation in that particular enterprise.

The Court: We will suspend at this time for 15 minutes.

(Recess had.)

By Mr. Sparks:

Q. I believe when we recessed, Mr. Arens, you were testifying in connection with the Southern News Letter. I will ask you what your information was prior to this hearing with reference to the type of material carried by the Southern News Letter?

A. Basically communist propaganda.

Q. Now, I will show you a copy of the indictment and I will ask you to take the questions beginning with Count 1 down through Count 6 and state what information you were attempting to elicit by each of those questions?

A. Question 1—I will read it: "And did you participate in a meeting here at that time?" We were attempting to elicit from Mr. Braden information respecting his participation as a communist in a meeting here in Atlanta for the purpose of developing information about the technique of communists in penetrating groups and organizations on behalf of the communist party. One of the things we had in mind to attempt to develop would be factual material which could be used by the committee in its appraisal of legislation then pending on redefining certain activities which might be encompassed within legislative mandates, such as the Smith Act.

The second question: "Who solicited the quarters to be made available to the Southern Conference Educational [fol. 48] Fund?" That question tied in with the preceding questions in the course of the hearings which we were attempting to determine whether or not certain quarters had been solicited by a person who was a communist in order to develop factual information on technique which is a pattern of communist operation of soliciting non-communist facilities for the purpose of disguising the true identity of the promoters of a group and, that again, had the information been forthcoming it would have been helpful to the committee in the appraisal not only of existing legislation, then existing legislation and its administration and operation, but in assisting the committee in appraisal of proposals then pending before the committee legislative-wise.

The next question: "Are you connected with the Emergency Civil Liberties Committee?" The information which was sought to be obtained there was any connection which this particular witness who had been identified as a communist may have had with an organization which itself had been found by the Senate Internal Security Subcommittee to be a communist front, more particularly, we were concerned with developing this information because it was suggested to the committee and was our information that this witness had been in recent conference with the head of the Emergency Civil Liberties Committee who himself was a communist, identified as a communist. This information, had it been forthcoming, would have added to the fund of knowledge of the committee itself, our committee, the committee on Un-American Activities in appraising the function and activity of the Emergency Civil Liberties Committee and determining whether or not our committee, had it been forthcoming, plus other information [fol. 49] which we then had, might be sufficient quantity of information for the committee to itself cite the Emergency Civil Liberties Committee.

The next question: "Did you and Harvey O'Connor in the course of your conference there in Rhode Island develop plans and strategies outlining work schedules for the Emergency Civil Liberties Committee?" As I have already indicated, our committee, the Un-American Activities Committee, had a deep concern over the activities of the Emergency Civil Liberties Committee, its functions across the country. We were trying to elicit here information as to what may have developed between two persons who had been identified as communists respecting plans and strategies of an organization which itself has been engaging in dissemination of communist propaganda and which according to the findings of the Senate Internal Security Subcommittee is itself a communist front. All this information, had it been forthcoming, would have added appreciably to the fund of knowledge of the committee in its appraisal of legislative proposals then pending and in the administration of the Internal Security Act which has provisions for citation of organizations as communist fronts, and I am not presently aware of any out-

standing citation by the subversive activity control board of the Emergency Civil Liberties Committee. So that would have been very vital information from our standpoint had it been available to us.

The next question: "Were you a member of the Communist Party the instant you affixed your signature to that letter?" I have previously on this record alluded to a letter which was sent by the defendant in this proceeding and another person to a number of persons respecting legislative activity. It was of deep concern to [fol. 50] this committee to determine not whether or not the letters were sent, because everyone has a right to send letters, not to determine whether or not petitions were being sent to the Congress, but to determine what were the techniques involved by the Communist Party in procuring signatures and in disseminating the Communist Party line at the behest of the conspiratorial operation in the country. Again it would have been, in my judgment, valuable information for the committee to obtain, again for the purpose of appraising communist party techniques in its operation in the United States.

Question 6: "I would just like to ask you whether or not you, being a resident of Louisville, Kentucky, have anything to do with there the Southern Newsletter?" As I have previously indicated on this record, it was the information of the committee that this particular witness had been a writer of articles or columns or something of the kind that appeared in the Southern Newsletter. It was also the information of the committee, and we were not too certain about what the facts were, that the Southern Newsletter was being channeled from Chicago to Louisville, Kentucky, where the defendant lived, on out through Southland, that there was a lockbox or a post office box, I should say, in Louisville. We were trying to develop from this witness information as to his connections with the Southern Newsletter, all for the purpose of developing factual material respecting a publication which we knew was Communist controlled and which was disseminating Communist propaganda for the purpose of enabling the committee to have additional fund of factual material which

it could appraise pending proposals, which it could appraise [fol. 51] administration and operation of the then existing internal security legislation on the statute books.

Q. Now, did you have any information of any other person who would be likely to give you the information that you were seeking from Mr. Carl Braden with reference to these matters?

A. No, sir.

Mr. Sparks: That concludes my examination of the witness, Your Honor. I don't know whether counsel wishes to examine him outside of the jury.

Mr. Coe: Yes, sir.

Cross examination.

By Mr. Coe:

Q. Will you describe the format of the Southern Newsletter? That is, what was its physical composition?

A. I believe we have a copy. I'm uncertain whether the copy was introduced into the record. My best recollection is at the moment, and it is not too clear, that the Southern Newsletter appeared to be a publication where you, not like a paper, where you open it up, you open it up as you would a leaflet, a pamphlet.

Q. In other words, it was in the form such as a mimeographed newsletter would come out?

A. Yes, sir, that's best of my recollection. But I want to make it clear that in the course of my work from day to day I see such a volume of material and I have had my attention directed to so many different activities that, [fol. 52] realizing that I am under oath, I don't want to be too precise as to my recollection. It is vague. But I recall seeing at least a few copies of the newsletter in which it appeared to be about the size of a good size letterhead, not the size of a newspaper.

Q. In other words, it was a press organ, is that correct?

A. I beg your pardon?

Q. It was a press organ, whether the Communist Party organized it, it was a press organ? That was something made for general distribution among people or a group of people?

A. That's correct, yes.

Q. Did I understand you correctly to say that one of your inquiries as to the Emergency Civil Liberties Committee was with a view to citing it?

A. I would say that would be—not necessarily with a view to citing it; a view to determine whether or not the Committee on Un-American Activities would or should cite it. It has been cited by the Senate Internal Security Subcommittee. Our particular committee has not cited it as yet.

Q. In other words, you contemplated the possibility of citing the Emergency Civil Liberties Committee by your committee?

A. That's correct, yes.

Q. Now, did you have knowledge of the fact that Harvey O'Connor was a writer?

A. Yes, sir.

Q. Wrote quite a number of books generally published?

A. I cannot at the moment testify with respect to any particular book that he has written, no.

[fol. 53] Q. Well, you understand that he is a writer of books which have been published in the United States, is that not true?

A. In the vaguest sort of way I am under the impression that he was an author. I am not familiar with any particular works of Mr. O'Connor.

Q. Now, with reference to the Southern Conference Educational Fund, did you or did you not have information that it devoted a large portion of its energy to the development of the integration movement?

A. I think that is substantially correct, that it did participate in the integration movement, yes.

Q. Did you not likewise know that Carl Braden was an employee of that organization and devoted a large portion of his energies to the integration movement?

A. That's correct, if we understand what you mean by devoting energies to the integration movement. It was our information then as it is now that the Communist, including Mr. Braden as a Communist, were using the integration movement as a facade for Communist Party purposes. If you say integration movement and carry with

it a proper motive, I cannot accept your terminology. But if you say the Southern Conference Educational Fund was at least ostensibly promoting the integration movement, I would have to agree with you.

Q. Irrespective of motive, the actual fact was that a great deal of time and effort in writing was devoted to the development of the integration movement?

A. I think I made my point clear. It has been our experience within this particular instance that Communist [fol. 54] use any movement that they can possibly wangle themselves into for the purpose of agitation and propaganda and for the purpose of the ultimate objectives of the conspiracy and not for the purpose which it was set up.

Q. Even if they did for the purpose of going and blowing up bridges, they talked about integration?

A. Yes, sir, as they talk about peace and so many other things which they used as a facade behind which they could carry on their conspiratorial activities. I was not under the impression at the time nor at the present time that the person whom we are discussing were sincere, properly motivated in their participation in these movements to which you have alluded.

Q. Now Mr. Arens, did I understand you a moment ago to say you had a copy of the Southern Newsletter with you?

A. No, I just said in passing I thought it may have been. I haven't studied this record for some time. It may have been at least by reference incorporated in this record.

Q. The thought I had in mind, if you had one available, I would like to see it.

A. I noticed as I quickly perused the record here a few moments ago when Mr. Sparks handed it to me, there were certain exhibits incorporated in the body of the record. I do not know whether a copy of the Southern Newsletter or the front page of it, we will say, was incorporated.

Q. That's counsel for the government?

A. I think no but I didn't want to make an affirmative assertion along that line without being certain.

[fol. 55] Mr. Coe: Could counsel for the government make such a document available to the witness?

Mr. Sparks: I have never seen a copy of the Southern Newsletter.

Mr. Coe: Neither have I. I have no further questions.

Mr. Sparks: I think the jury may come back in. Those are all the questions I have.

The Court: Very well. Let the jury come back.

(The jury returned to the box.)

Mr. Sparks: You are excused Mr. Arens. May he be excused, Your Honor, permanently?

Mr. Coe: That's agreeable to the defense.

The Court: Very well.

(Witness excused.)

Mr. Sparks: If it please the Court, I wish to read to the jury certain excerpts from U. S. Exhibit 9 which is in evidence, [fol. 56] that portion of it which deals with the testimony of Mr. Carl Braden. I will not read it all. It will go out to the jury but I wish to read certain portions of it.

The Court: Very well.

Mr. Coe: I believe it was our stipulation that either of us might read such portions as we desire.

The Court: That's right, yes.

Mr. Sparks: Gentlemen of the jury, I am going to read two certain excerpts from an exhibit which will be out with you, U. S. Exhibit No. 9 which has been admitted in evidence. I will state that I will read the name of the person asking the question and the name of the person who responds and any comments by the congressmen.

"Mr. Arens: Kindly identify yourself by name, residence, and occupation.

"Mr. Braden: My name is Carl Braden. I live at 4403 Virginia Avenue, in Louisville, Kentucky. I am a worker in the integration movement in the South, being employed by the Southern Conference Educational Fund, Inc., which is southwide interracial organization working to bring [fol. 57] about integration, justice and decency in the South.

"Mr. Arens: Mr. Braden you are appearing today in response to a subpoena that was served upon you by the House Committee on Un-American Activities?

"Mr. Braden: I am. I was vacationing in Rhode Island when a United States marshal took me off the beach and handed me a subpoena.

"Mr. Arens: And you are represented by counsel?

"Mr. Braden: I am.

"Mr. Arens: Counsel, will you kindly identify yourselves?

"Mr. Tucker: C. Ewbank Tucker of Louisville, Kentucky; Louisville, Kentucky, member of the Kentucky State Bar.

"Mr. Coe: John M. Coe of Pensacola, Florida, member of the Bar of Florida and the Supreme Court of the United States.

"Mr. Arens: In what capacity are you employed, Mr. Braden, with the Southern Conference Educational Fund?

[fol. 58] "Mr. Braden: I am employed as field secretary, and I am also associate editor of their newspaper, the Southern Patriot, which is a paper that disseminates information on integration in the South and about the people who are working for integration.

"Mr. Arens: How long have you been so employed, please, sir?

"Mr. Braden: A year.

"Mr. Arens: And what was your employment immediately prior to your present employment?

"Mr. Braden: I was employed—I was unemployed as a result of harassment and prosecution resulting from my efforts to bring about integration in Louisville, Kentucky."

Mr. Sparks: Now, I will skip down to the bottom of page 7.

"Mr. Arens: Mr. Braden, I understand you to say you were vacationing in Rhode Island when you were served with the subpoena to appear before this committee, is that correct?

"Mr. Braden: That is right, sir.

[fol. 59] "Mr. Arens: With whom were you visiting in Rhode Island?

"Mr. Braden: I was visiting Harvey O'Connor.

"Mr. Arens: Can you tell us, if you please, sir, what his occupation is?

"Mr. Braden: Harvey O'Connor is a writer.

"Mr. Arens: Is he connected with the Emergency Civil Liberties Committee?

"Mr. Braden: He is the chairman of it, the national chairman.

"Mr. Arens: And where did you come from to your point in Rhode Island; where was your immediate point of departure before you arrived in Rhode Island?"

"Mr. Braden: Mr. Arens, I believe this is outside the scope of any possible—this is not pertinent to any possible investigation that the committee might be conducting, and I also believe that it is an invasion of my right to associate under the first amendment, and I therefore decline to answer.

[fol. 60] "Mr. Arens: Mr. Chairman, I respectfully suggest the witness be ordered and directed to answer; and I should like, for the purpose of the record absolutely clear, to explain to the witness now the pertinency of the question.

"Sir, it is our understanding that you are now a Communist, a member of the Communist Party; that you have been identified by reputable, responsible witnesses under oath as a Communist, part of the Communist Party which is a tentacle of the international Communist conspiracy. It is our information further, sir, that you as a Communist have been propagating the Communist activity and the Communist line principally in the South; that you have been masquerading behind a facade of humanitarianism; that you have been masquerading behind a facade of emotional appeal to certain segments of our society; that your purpose, objective, your activities, are designed to further the cause of the international Communist conspiracy in the United States.

"Now, there is pending before the Committee on Un-American Activities pursuant to its authority, its duty, and its responsibility legislation. Indeed, the chairman of the Committee on Un-American Activity sometime ago introduced a bill, H.R. 9937, which has numerous provisions which are being considered by the Committee on Un-American Activities. Some of these provisions undertake to tighten the security laws respecting the registration of communists; some of these provisions undertake to tighten the security laws respecting the dissemination of communist propaganda. Some of these security laws preclude certain types of activities, the very nature of which we understand you have been engaged in.

[fol. 61] "In addition to that, sir, there is pending before the Committee on Un-American Activities a series of proposals that are not yet incorporated into legislative form, which the committee is considering. In addition to that, the Committee on Un-American Activities has a mandate from the Congress of the United States to maintain a surveillance over the administration and operation of numerous security laws that are presently on the statute books, including the Internal Security ~~Act~~, the Communist Control Act of 1954, the Foreign Agents Registration Act, espionage and sabotage statutes.

"It is for that reason and for these reasons which I have just described to you that this committee has come to Atlanta, Georgia, for the purpose of assembling factual material which the committee can use, in connection with other material which it has assembled, in appraising the administration and operation of the laws and in making a studied judgment upon whether or not the current provisions of the laws are adequate and whether or not each or any of these proposals pending before the committee should be recommended for enactment.

"If you, sir, now will tell us, in response to the last outstanding principal question, where you have been immediately prior to your sojourn in Rhode Island with Harvey O'Connor, who has been identified as a hard-core member of the communist conspiracy, head of the Emergency Civil Liberties Committee, another organization that has been cited by a Congressional Committee as a communist front.

"If you will tell us, sir, now of your activities in this connection, that will add to the fund of knowledge of this committee so that it can more adequately discharge the [fol. 62] duties and responsibilities which it has upon it.

"Now, Mr. Chairman, on the basis of that explanation of the pertinency of the question which I have posed to this witness, I respectfully suggest that you now order and direct this witness either to answer the question or to invoke his privileges under the fifth amendment against giving testimony which could be used against him in a criminal proceeding.

"Mr. Willis: I think, sir, that a sufficient foundation has been laid to make the question completely pertinent, and I direct you to answer the question.

"Mr. Braden: In the first place, Mr. Chairman, Mr. Arens has been grossly misinformed; and it still remains a fact that my beliefs and my associations are none of the business of this committee.

"Mr. Willis: In other words, you are maintaining your attitude of refusing to answer?

"Mr. Braden: On the grounds of the first amendment to the United States Constitution; which protects the right of all citizens to practice beliefs and associations, freedom of the press, freedom of religion, and freedom of assembly. On that ground I stand, sir.

"While you are investigating, Mr. Arens, you ought to investigate some of the atrocities against the Jews and Negroes in the South, such as the picketing of the Atlanta Journal last Sunday morning."

[fol. 63] Mr. Sparks: I skip over to the top of Page 10, Your Honor. A statement by Mr. Arens to Mr. Braden.

"Mr. Arens: Yes. I want the record to be absolutely clear, sir, so we do not put this committee in the ludicrous position of a complete, thorough explanation in response to each invocation of alleged lack of pertinency, that the explanation which I gave to you as to the pertinency of the question is understood to be applicable to similar questions which I am intending to propose to you."

Mr. Sparks: Farther down on Page 10, a statement by Mr. Willis.

"Mr. Willis: Let the Chair understand the situation. And I think that should be made perfectly clear. I think the question of pertinency of these hearings has been completely explained and is a matter of record. Without repetition, you are now on your guard as to why these questions are being propounded to you, all of them; and let that basis be the general basis for the question."

Mr. Sparks: Farther down on Page 10, a statement by Mr. Arens.

"Mr. Arens: And let it be clear, also, sir, that I do not propose, nor have I thus far at any time undertaken, to

[fol. 64] probecany private beliefs. We are interested here solely in your participation in an organization which is controlled by a Godless, atheistic conspiracy, which is sweeping the world and which ultimately threatens, and will threaten, the integrity of this Nation; and if this committee of the United States Congress cannot solicit from a citizen information respecting the operation within the confines of the border of this Godless, atheistic conspiracy, God help this country."

Mr. Sparks: I will move over to Page 14, toward the middle of the page or a little lower.

"Mr. Arens: Now, Mr. Braden, please tell the committee when you were last here in the Atlanta area pursuant to your work..

(The witness conferred with his counsel.)

"Mr. Braden: I am trying to think exactly when it was, sir. The latter part of May.

"Mr. Arens: Of this year?

"Mr. Braden: Yes, sir.

"Mr. Arens: Were you here pursuant to the official assignment which you have as a field organizer or field [fol. 65] secretary, as it were, of the Southern Conference Educational Fund?

"Mr. Braden: Yes, sir. I travel all over the South in the interest of integration.

"Mr. Arens: And where did you hold your meeting here in May?

"Mr. Braden: Did you ask me about a meeting?

"Mr. Arens: Did you have a meeting here in May?

"Mr. Braden: Again I will have to stand on the first amendment on the grounds that this is an invasion of private belief and association; that the question has no possible pertinency to any possible legislative purpose; and that the mandate establishing this committee is too vague for anybody to know what you are investigating.

"Mr. Arens: Mr. Chairman, I hope and expect and am relying upon the request that I made that the explanation of pertinency which I gave at the outset of this interroga-

tion carries over with reference to each of these principal questions.

"Mr. Braden: That is understood, sir.

[fol. 66] "Mr. Arens: Were you in the Atlanta area in December of 1957?"

"Mr. Braden: I beg your pardon, sir?"

"Mr. Arens: Were you in the Atlanta area in December of 1957?"

"Mr. Braden: Yes.

"Mr. Arens: And did you participate in a meeting here at that time?"

Mr. Sparks: I call the attention of the Court that that is the first count of the indictment.

"Mr. Braden: Again the first amendment; same grounds, sir. Do I have to repeat it each time, or is it understood each time?"

"Mr. Willis: Well, it is understood that you are referring to the first amendment.

"Mr. Braden: The challenging of the pertinency of the question, challenging the mandate of the committee, and my rights under the first amendment.

[fol. 67] "Mr. Willis: Yes. In order to establish the basis for any proceeding that might conceivably be instituted, do you understand that you are ordered to answer these questions, meaning that the committee disagrees with your position and is insisting upon pertinency? Do we understand that?"

"Mr. Braden: Yes, I understand, and I disagree with the committee, and I will understand that you are directing me to answer each question in order to expedite the matter so that we will not be wasting the committee's time and everybody else's time on this."

Mr. Sparks: Now, at the bottom of Page 15.

"Mr. Arens: Now, Mr. Chairman, I should like, notwithstanding the general direction that the explanation of pertinency carries over to the principal questions, to add a brief explanation with reference to the question which I intend to propound in just a moment.

"Before this committee, Mr. Braden, a day or so ago, Mr. Armando Penha took an oath and testified respecting Communist Party techniques—Mr. Penha was in the Communist conspiratorial operation in this country at the behest of the Federal Bureau of Investigation, and he served there for eight years. In the course of his testimony yesterday he said, in effect on this issue, that the comrades are under a directive to penetrate non-communist organizations, fine, patriotic, humanitarian organizations for the [fol. 68] purpose of worming their way in, to further the communist objectives.

"I am now going to display to you, sir, some photographs, showing you and your wife entering the American Red Cross Building in Atlanta, December of 1957, at which time it is our understanding, you were a participant in sessions there. We should like to have you, first of all, look at these photographs and tell the Committee whether or not they are true and correct reproductions of your physical features as you were entering the American Red Cross in December of 1957, a fine, humanitarian, patriotic organization."

Mr. Sparks: Then I will skip over, Your Honor, to Page 17, near the top of the page. This is Count 2 of the indictment.

"Mr. Arens: Excuse me. Who solicited the quarters to be made available to the Southern Conference Educational Fund?"

"Mr. Braden: I will have to stand on my previous refusal to answer on the same grounds, first amendment and so forth.

"Mr. Arens: Did you participate in the session?"

"Mr. Braden: Same grounds.

[fol. 69] "Mr. Arens: The record is clear, is it not, Mr. Chairman and counsel to the witness, that in response to each of these refusals to answer, the Chair has given a direction and there has been an appropriate explanation of the pertinency?"

"I see you nod your head. The reporter cannot get a yes from your nod.

"Mr. Braden: I understand. My counsel and I understand that."

Mr. Sparks: Now, the question embodied in Count 3 is next.

"Mr. Arens: Now, sir, are you connected with the Emergency Civil Liberties Committee?"

"Mr. Braden: Same ground."

"Mr. Willis: You mean you refuse to answer on the same ground?"

"Mr. Braden: Yes, sir. I refuse to answer on the same ground. It being, you know—do we have to go through it each time or will it be understood, sir?"

Mr. Sparks: Then skipping down farther on Page 17 to a statement by Mr. Arens, which is Count 4.

[fol. 70] "Mr. Arens: Now kindly answer the question. Did you and Harvey O'Connor, in the course of your conferences there in Rhode Island, develop plans and strategies outlining work schedules for the Emergency Civil Liberties Committee?"

"Mr. Braden: Same answer on the same grounds, Mr. Chairman; same refusal to answer on the same ground."

"Mr. Arens: Now, in addition to the letter attacking this committee—and we are used to it—by the Southern Conference Educational Fund, have you, as a field representative or field organizer of the Southern Conference Educational Fund, promoted, stimulated, political pressure, or attempted political pressure, on the United States Congress with reference to security measures pending in the Congress?"

"Mr. Braden: I am afraid the question is too vague for an answer, Mr. Chairman."

"Mr. Arens: I will be specific then, sir. I will display, if you please, sir, a photostatic reproduction of a letter on the letterhead of the Southern Conference Educational Fund, signed Carl and Anne Braden, field secretaries."

"Mr. Braden: May we have it read into the record?"

[fol. 71] "Mr. Arens: I am going to display it to you—in which, among other things, the recipient of the letter, "Dear Friend," is asked to write their Senators and Con-

gressmen to oppose S. 654, S. 2646, and H. R. 977, all of which are security measures pending in the United States Congress.

"Kindly tell this committee, while you are under oath, sir, whether or not that photostatic reproduction of that letter is true and correct and valid.

"Mr. Braden: I will have to read it first.

"Dear Friend"—

"Mr. Willis: After you read it—are you going to just read it, or will you answer the question as to whether you signed it or not, if it proves—

"Mr. Braden: It will indicate from the letter that I signed it, I think, I mean whether I did or not. If it is a letter I wrote, it is bound to have my name on it.

"Dear Friend:

"We are writing to you because of your interest in the Kentucky "sedition" cases, which were thrown out of Court on the basis of a Supreme Court decision declaring state sedition laws inoperative.

"There are now pending in both houses of Congress bills that would nullify this decision. We understand there is a real danger that these bills will pass.

"We are especially concerned about this because we know from our own experience how such laws can be used [fol. 72] against people working to bring about integration in the South. Most of these state statutes are broad and loosely worded, and to the officials of many of our Southern states integration is sedition. You can imagine what may happen if every little local prosecutor in the South is turned loose with a state sedition law.

"It is small comfort to realize that such cases would probably eventually be thrown out by the Supreme Court. Before such a case reaches the Supreme Court, the human beings involved have spent several years of their lives fighting off the attack, their time and talents have been diverted from the positive struggle for integration, and money needed for that struggle has been spent in a defensive battle.

"It should also be pointed out that these bills to validate state sedition laws are only a part of a sweeping attack on the U. S. Supreme Court. The real and ultimate target

is the Court decisions outlawing segregation. Won't you write your senators and your congressman asking them to oppose S. 654, S. 2646, and H. R. 977. Also ask them to stand firm against all efforts to curb the Supreme Court. It is important that you write—and get others to write—immediately as the bills come up at any time.

"Cordially yours,

Carl and Anne Braden."

The Court: At this time we will adjourn for lunch.

Now, gentlemen of the jury, during the noon adjournment of this Court you will be very careful to obey these instructions. Do not discuss this case among yourselves or with anyone in your presence. Do not accept hospitality from anyone connected with the case or interested in the [fol. 73] result of the case. If anyone undertakes to approach you about the case in any way, you will report that fact to the Court. Do not read or listen to anyone discuss the case in any way. Do not read any article that discusses the case or discusses the subject matter of the prosecution here. Just be very careful to keep yourselves perfectly free from contact with anything relating to this case outside of the Court room.

(A luncheon recess was had.)

Mr. Sparks: If it please the Court, I believe I had just completed reading the letter which ended with the signature of Carl and Anne Braden, Field Secretaries. I am just about through.

"Mr. Arens: Did you sign that letter?

"Mr. Braden: Our signature is on the letter.

"Mr. Arens: Were you a member of the Communist Party the instant you affixed your signature to that letter?"

Mr. Sparks: And that is the question which is contained in Count 5 of the indictment.

"Mr. Braden: I refuse to answer on the same ground previously stated, Mr. Chairman.

[fol. 74] "Mr. Jackson: Mr. Chairman—

"Mr. Arens: Mr. Braden, are you connected in any way with the Southern Newsletter?

"(The witness conferred with his counsel.)

"Mr. Arens: I might explain to you. We had a man who has been identified as a Communist—

"Mr. Braden: Who is that?"

"Mr. Arens: Eugene Feldman—who lives in Chicago, Illinois. He is the editor of the Southern Newsletter. We had him before the Committee yesterday, at which time we displayed to him the application for a post office box made on behalf of the Southern Newsletter, a publication which is developed in Chicago, which is sent to a post office box in Louisville, Kentucky, and then mailed out over the South. I would just like to ask you whether or not you, being a resident of Louisville, Kentucky, have anything to do with the Southern Newsletter?"

Mr. Sparks: That is contained in Count 6 of the indictment.

"Mr. Braden: I think you are now invading freedom of the press," Mr. Arens and Mr. Chairman. I object to your [fol. 75] invasion of the freedom of the press, and I also decline to answer the question on the same grounds. You are not only attacking integrationists, you are attacking the press."

Mr. Sparks: And then skipping to the bottom of Page 19, a statement by Mr. Arens.

"Mr. Arens: In view of the distinguished Congressman's observation on the Southern Conference Educational Fund, the organization which has been cited as a communist front with which this man has a connection as an identified communist is the Emergency Civil Liberties Committee. The Southern Conference Educational Fund itself is, for all practical purposes, the successor organization to the Southern Conference for Human Welfare, which itself had been cited as a communist front. The Senate Internal Security Subcommittee ran an investigation of the Southern Conference Educational Fund—and I say in passing that I happen to have been identified with the Internal Security Subcommittee at that time and did the interrogating of the witnesses.

"The report of the Internal Security Subcommittee with reference to the Southern Conference Educational Fund concludes substantially as follows—this is not an exact quotation; it is only from memory—that an objective appraisal from the record compels the conclusion that the Southern Conference Educational Fund is, for all practical purposes, operating under the same leadership and for the same objectives as the Southern Conference for Human Welfare.

[fol: 76] "Mr. Braden: May we have the record show, then, Mr. Chairman, that the Southern Conference Educational Fund was not specifically listed as he said—

"Mr. Jackson: Very well, Mr. Chairman.

"Mr. Braden: Originally.

"Mr. Arens: That is one of the purposes why we wanted to interrogate you, because you are an identified communist by a reliable, responsible witness who placed her liberty on the line and said, "While I was in the Communist Party, I knew him, to a certainty, as a member of the Communist Party conspiracy." That is you. You are now the field representative in this committee. We may desire eventually to consider a citation of the Southern Conference Educational Fund on the basis of the information which we are now and elsewhere developing."

Mr. Sparks: And, Your Honor, you requested me to call that to your attention so you could instruct the jury.

The Court: Yes, sir.

Gentlemen of the jury, the paragraph that was last read to you by the United States Attorney is admitted for your consideration for the limited purpose only of considering that statement as having been made to Mr. Braden in determining whether or not Mr. Braden was [fol: 77] sufficiently informed as to the pertinency of the questions asked and you may consider it for that purpose and that purpose only. You will not consider it as proof of the truth of the statements made in that paragraph by Mr. Arens, but simply as statements made to Mr. Braden and you limit that consideration to the determination of the issue as to whether Mr. Braden was properly and ade-

quately informed as to the pertinency of the questions asked.

Mr. Sparks: If it please the Court, I ask the Court to take judicial notice of Volume 60, United States Statutes at Large, 1946, at Page 828 and also at Page 832, Section 136, being the paragraph entitled Legislative Oversight by Standing Committee.

There is only one other matter, I think, that was left dangling and that was with reference to U. S. Exhibit No. 4 where Rule 11 was set out as being introduced and I conferred with defense counsel and they agree that under the Court's ruling as to the transmission of any documents, that they have agreed that it's not necessary for me to specify the exact portions of Rule 11 that I rely upon, but simply call the Court's attention to it.

The Court: I believe that's pages 328 thru 371.

Mr. Sparks: That's right.

The Court: I understand then that the objections made to that particular rule are withdrawn?

[fol. 78] Mr. Coe: That's right.

Mr. Sparks: The government rests.

Mr. Coe: As part of the government's case and in accordance with our stipulation, I wish to read a portion of the government's exhibit.

The Court: Yes, sir.

Mr. Sparks: I so stipulated.

Mr. Coe: I read from Page 7, the middle of the page.

"Mr. Arens: And what was your last principal occupation?

"Mr. Braden: I was a newspaper man, employed as a copy editor by the Louisville Courier-Journal.

"Mr. Arens: How long did that employment endure?

"Mr. Braden: I was employed on two different occasions. You mean my entire newspaper career or—

[fol. 79] "Mr. Arens: Just the highlights, please, sir.

"Mr. Braden: All right. I was a reporter and rewrite man for the Louisville Herald-Post from 1930 to 1936; a reporter and editor for the Cincinnati Inquirer; city editor of the Harlan, Kentucky, Daily Enterprise; labor reporter for the Louisville Times; and then editor for the Courier-

Journal, in addition to being editor of several labor newspapers.

"Mr. Arens: Would you give us now please just a word about your education?"

"Mr. Braden: I studied from 1928 to 1930 for the Catholic priesthood. I might add that I am now a member of the Episcopal Church.

"Mr. Arens: When did you complete your formal education?"

"Mr. Braden: I did not attend school after 1930.

Mr. Coe: I read again from Page 12.

"Mr. Braden: This is an open letter to the United States House of Representatives:

[fol. 80] "We are informed that the Committee on Un-American Activities of the House of Representatives is planning to hold hearings in Atlanta, Georgia, at an early date.

"As Negroes residing in Southern States and the District of Columbia, all deeply involved in the struggle to secure full and equal rights for our people, we are very much concerned by this development.

"We are acutely aware of the fact that there is at the present time a shocking amount of un-American activity in our Southern States. To cite only a few examples, there are bombings of the homes, schools, and houses of worship of not only Negroes but also of our Jewish citizens; the terror against Negroes in Dawson, Ga.; the continued refusal of boards of registrars in many Southern communities to allow Negroes to register and vote; and the activities of White Citizens Councils encouraging open defiance of the United States Supreme Court.

"However, there is nothing in the record of the House Committee on Un-American Activities to indicate that, if it comes South, it will investigate these things. On the contrary, all of its activities in recent years suggest that it is much more interested in harassing and labeling as "subversive" any citizen who is inclined to be liberal or an independent thinker.

"For this reason, we are alarmed at the prospect of this committee coming South to follow the lead of Senator Eastland, as well as several state investigating committees,

in trying to attach the "Subversive" label to any liberal white Southerner who dares to raise his voice in support of our democratic ideals.

"It was recently pointed out by four Negro leaders who met with President Eisenhower that one of our great needs [fol. 81] in the South is to build lines of communication between Negro and white Southerners. Many people in the South are seeking to do this. But if white people who support integration are labeled "subversive" by congressional committees, terror is spread among our white citizens and it becomes increasingly difficult to find white people who are willing to support our efforts for full citizenship. Southerners, white and Negro, who strive today for full democracy must work at best against tremendous odds. They need the support of every agency of our Federal Government. It is unthinkable that they should instead be harassed by committees of the United States Congress.

"We therefore urge you to use your influence to see that the House Committee on Un-American Activities stays out of the South—unless it can be persuaded to come to our region to help defend us against those subversives who oppose our Supreme Court, our Federal policy of civil rights for all, and our American ideals of equality and brotherhood.

This letter is dated July 22, 1958, which is the day that my subpoena was dated in Washington, D. C., by Congressman Francis Walter. There it is."

Mr. Coe: I read from Page 16, a statement by Mr. Arens, starting at the beginning of the third paragraph.

"I am now going to display to you, sir, some photographs, showing you and your wife entering the American Red Cross Building in Atlanta, December of 1957, at which time it is our understanding you were a participant in sessions there. We should like to have you, first of all, look at these photographs and tell the committee whether or not they are true and correct reproductions of your [fol. 82] physical features as you were entering the American Red Cross in December of 1957, a fine, humanitarian, patriotic organization.

"Mr. Braden: Before we get to that, Mr. Arens, you said that Mr. Penha made some statement there.

"Mr. Arens: Mr. Chairman, I respectfully suggest the witness be ordered and directed to answer the question. This record is crystal clear if I ever saw one.

"Mr. Braden: Mr. Chairman, the man made a lot of statements.

"Mr. Arens: I do not think the committee needs to be harassed or haggled with by an identified communist.

"Mr. Willis: Answer the question.

"Mr. Arens: Now, sir, kindly answer the question.

"Mr. Braden: Shall I take these pictures one by one?

"Mr. Arens: Kindly tell us whether or not these pictures are a true and correct reproduction of yourself and your wife entering the American Red Cross Building in December of 1957.

[fol. 83] "Mr. Braden: While we are at it, my wife is not here, so I guess I can identify all of us, let's see. This is a picture of me and James A. Dombrowski, executive secretary of the Southern Conference Educational Fund, and Mrs. Anne Braden, myself and Aubrey W. Williams, publisher of the Southern Farm and Home, who was director of the National Youth Administration under Franklin D. Roosevelt, one of the many liberal white Southerners in the South who has been under attack for his position on integration."

Mr. Coe: That is all we wish to read.

The Court: I believe the government has rested.

Mr. Sparks: Yes, sir.

Mr. Coe: The defense rests, if it please the Court.

The Court: Very well. Let the jury retire to the corridor, please.

(The jury retired to the corridor.)

Mr. Boudin: We hand you a written motion, Your Honor, upon which I shall argue in support of our motion for a judgment of acquittal. A copy has been given to counsel for the prosecution.

[fol. 84] I shall await Your Honor's before I begin the argument.

The Court: Very well, I have read the grounds.

(Argument followed.)

The Court: Anything else to be said?

(No response.)

MOTION OF COUNSEL FOR DEFENDANT FOR JUDGMENT OF
ACQUITTAL AND DENIAL THEREOF

The Court: The motion of the defendant for a judgment of acquittal on each and every ground of the written motion made is overruled and denied.

Anything further to come before the Court before the jury is called back in?

Mr. Sparks: Nothing further, Your Honor.

The Court: Call the jury back to the box.

(The jury returned to the box.)

Mr. Sparks: Has the defense closed?

The Court: Yes, sir.

[fol. 85] Mr. Coe: The defense closed.

ARGUMENT OF COUNSEL FOR PLAINTIFF

Mr. Sparks: If it please the Court and gentlemen of the jury, you all haven't heard much of this case. You've been cooling your heels in the corridor nearly all day, but you are supposed to decide the case on the evidence which you have heard and on the evidence which will go out with you to the jury room.

Now, the issue in this case is not, I repeat, is not whether or not Mr. Braden is a communist, a member of the Communist Party. The only issue that you have to decide is, as I told you before in my opening statement, whether or not he appeared before this committee here in Atlanta in this same building in public hearings and was asked six questions and wilfully refused to answer those six questions, and whether at the time that he wilfully refused to answer those six questions he knew or a reasonable man in his position should have known that those questions were pertinent to the matter about which

the committee was, or the Subcommittee of the Un-American Activities Committee of the House of Representatives, was inquiring. Of course, the subject of that inquiry, as you have heard, was the extent, character and objects of communist colonization and infiltration in the textile and other basic industries located in the South, Communist Party propaganda activity in the South, and entry and dissemination within the United States of foreign Communist Party propaganda.

Gentlemen, the key exhibit in this case is U. S. Exhibit 9. Just remember that. No. 9. Two more than lucky 7. This sets out the entire testimony of Mr. Carl Braden. The [fol. 86] questions and answers. You have had most of them read to you or at least the substantial part of these questions and answers read to you. I do want to recommend to you or respectfully suggest to you that you pay particular attention to U. S. Exhibit No. 9. Perhaps one member of your jury should read the entire thing to you and discuss it, because that is the key of the case. Other exhibits in this case, some of them will be out with you and some will not, but they simply describe the procedure by which this case got here. You will see how the House Un-American Activities Committee, the full committee met in Washington in the early part of 1958, I believe it was, and passed a resolution or a resolution was passed providing for the hearings down here in Atlanta, Georgia, on this subject and the objects of that are set out in that document which is in evidence and will be out before you. You will then see how three representatives were designated by Chairman Walter of Pennsylvania, Mr. Jackson, Mr. Tuck, former Governor Tuck of Virginia, I believe, and Mr. Willis, to conduct these hearings down here in Atlanta. Then you will see that in August, August 8, 1958, the subcommittee met. That was after Mr. Braden had refused to answer these questions, along with others contained in U. S. Exhibit No. 9. You will see how they met and voted contempt citations or voted to present the facts to the full committee. Then you will see how the full committee voted to present the facts of Mr. Braden for refusing to answer these questions to the House of Representatives of the United States. And

then you will see the adoption of a resolution citing him for contempt, and you will see a letter from the Honorable Sam Rayburn from Texas referring the matter to this office.

[fol. 87] As I say, that is all procedural in nature. The key to the case, as I see it, is in U. S. Exhibit No. 9. Of course, you will consider all the other exhibits as well.

Now, as a representative of the government, a prosecuting attorney in this case, I say that based upon the evidence in this case, which is U. S. Exhibit No. 9, it is undisputably clear that Mr. Braden knowingly and advisedly answered only those questions which he wanted to and when the questions got into a particular area, as will be disclosed by this report, he just simply refused to answer, clammed up on the ground of the first amendment, and on the fact that the questions were not pertinent. Just look through Exhibit No. 9 and see where time after time after time Mr. Arens and the various members of the committee directed him to answer, ordered him to answer, explained the pertinency of the question, referred back to the explanation of the pertinency of the question, and then can you say after you see that or read that and examine it, that his refusal to answer was a mistake. Can you say that he was mistaken, that he just didn't answer by accident? Can you say he didn't understand the question? Can you say that the question was not sufficiently explained to him? I don't think you can. I think all throughout this U. S. Exhibit No. 9, which is the actual record of what happened here in Atlanta, Georgia, when the subcommittee was meeting here last year shows clearly a clear wilful refusal to answer. In one place in the record he told them to go back to Washington if it was too hot for them down here. His attitude was arrogant and defiant. He is not being tried for arrogance and defiance. That's not what contempt of Congress means. But I think you [fol. 88] will find specific places where he did display arrogance and I think you can consider that on the question of whether his refusal to answer these questions was wilful. He is not being tried for that arrogance. It is merely a wilful refusal to answer a question which he knows to be pertinent.

I have thumbed through U. S. Exhibit No. 9 until it's about to fall apart, but I do want to call one more matter to your attention. I know you are tired of having people read to you from this thing but I want to read to you and call it to your attention.

"Mr. Willis: Yes. In order to establish the basis for any proceeding that might conceivably be instituted, do you understand that you are ordered to answer these questions, meaning that the committee disagrees with your position and is insisting upon pertinency? Do you understand that?

"Mr. Braden: Yes. I understand, and I disagree with the committee, and I will understand that you are directing me to answer each question in order to expedite the matter so that we will not be wasting the committee's time and everybody else's time on this."

If that isn't a clear declaration of the fact that he understood that he was being ordered to answer each question—that's the thing you must decide, as to whether he was unequivocally ordered to answer each question and whether he understood that he was to answer each question. I say that's unequivocal as to each question.

[fol. 89] Then at the bottom of Page 14 Mr. Arens said:

"Mr. Chairman, I hope and expect and am relying upon the request that I made that the explanation of pertinency which I gave at the outset of this interrogation carries over with reference to each of these principal questions.

"Mr. Braden: That is understood, sir."

So we go through this record. Do not expect to find as to each of these six questions a rehashing of the entire explanation of pertinency which had been made before because the record shows clearly that he said that he understood the explanation of pertinency which was given to him at the beginning of the hearing and carried over to each succeeding question. He understood that he was directed to answer and ordered to answer each individual question. That's all there is to consider, gentlemen. You do not decide whether or not the questions were pertinent. That is a matter that is to be decided by the Court and

the Court will charge you in relation to that. That is your only function here, to decide whether it was wilful, did he understand it, was it the product of any mistaken belief on his part, mistake as to the question. You must decide did he refuse to answer them? Was that refusal wilful? We have proven all of the elements of that. There is no other verdict in this case based on the evidence than guilty on all six counts.

ARGUMENT OF COUNSEL FOR DEFENDANT

Mr. Coe: If the Court please and you gentlemen of the jury, as the government has said, the decision which you make boils down to about two lines of the indictment. It [fol. 90] is said that he was asked questions which were pertinent to the question under inquiry and he knowingly, wilfully and unlawfully refused to answer them.

Now, gentlemen, there is something about this case that strikes me as a little odd if it wasn't so serious to my client, and that is this, that we have spent the major portion of the day convincing the open mind of an impartial judge with evidence that was presented to this Court while you gentlemen were sojourning in the hall, that these questions were pertinent to the subject matter under inquiry and yet they say that Carl Braden, a man unskilled in the law, not equipped with the analytical powers of a judge upon the Federal Bench, must have been convinced that the matters were pertinent to the inquiry in the heat of the examination which occurred in this next Court room about the last of this past July. If it took half a day to do it here before the Judge, is it reasonable to assume conclusively as the government does that Carl Braden knew it in ten minutes? They tell you that Carl Braden knew it because Mr. Arens and the chairman of the committee said so. I wonder, gentlemen, if the American citizens have gotten to such a point that their public servants are their public masters so that Mr. Arens can sit in the Circuit Court of Appeals and say to Mr. Braden, "I command you to answer. This is pertinent." And Mr. Braden, irrespective of the fact that his conscience tells him otherwise, was bound to obey. Mr. Braden, gentlemen, must

know at his peril these facts. Mr. Braden must know it from the deliverance of his own intelligence and his own conscience and not necessarily accept it as law from Mount ~~Sin~~ Sinai when it is thundered down at him by Mr. Arens or Mr. Walters, the chairman of the committee.

[fol. 91] Now, gentlemen, let us see what Mr. Braden, what knowledge he brought to this hearing. Mr. Arens said that he has reliable information that the Southern Conference Educational Fund is a communist organization. Mr. Penha has said so. Who is Mr. Penha? I believe it appears that he was an F. B. I. agent planted in the Communist Party for eight years. In plain language, an informer. Mr. Penha says it is a communist organization. But Mr. Braden knew what kind of an organization it was. Mr. Carl Braden worked for it. He got his weekly pay check from it and he made his living at it. He has no hesitancy in telling you gentlemen what it was, although it may be unpopular with some of you gentlemen as it is quite unpopular in some areas of the South. He says on Page 6: "I am a worker in the integration movement in the South, being employed by the Southern Conference Educational Fund, Inc., which is a south-wide interracial organization working to bring about integration, justice, and decency in the South." He didn't have to go to Mr. Penha. He didn't have to go to Mr. Arens to know what the Southern Conference Educational Fund was. Did he have to sit so humbly by and take the hearsay statement of Mr. Arens that it was a subversive organization bent, I presume, upon overthrowing the government of the United States through having meetings in the Red Cross Building in Atlanta? Did he have to bow his head humbly before his public servants? "Yes, sir, you have said it and I will answer it." I don't think we got down to that point. What else did he know about the Southern Conference Educational Fund? He was asked, incidentally, about the meeting in the Red Cross Building in Atlanta. I submit to you gentlemen that however ignorant and however unintelligent they may think that the [fol. 92] Red Cross people are, they don't lend the use of that building to just anybody. They lend the use of that building to organizations which they deem to be humanitarian and decent. If you go there with a wild idea, rabble

rousing crowds that are going to violate the laws, you will never get into the American Red Cross Building.

He described the picture of himself, "Yeah, I believe it appears it was taken from the window across the street by an F.B.I. agent. This picture is of me and James A. Dombrowski and Mrs. Braden and Aubrey W. Williams, publisher of the Southern Farm and Home," which I don't think even Mr. Arens would contend is a subversive type of communist literature, "who was director of the National Youth Administration under Franklin D. Roosevelt, one of the many liberal white Southerners in the South who has been under attack for his position on integration." Those are the facts which Carl Braden knew when the committee came and asked him these questions, whether he had secured the American Red Cross Headquarters for the meeting, whether he had attended the meeting or what else he had done.

Now, let me point out to you another thing, gentlemen. Neither Carl Braden nor any other man in his right senses loves to get himself into trouble with the law. It just ain't any fun to face a trial like this or the consequences of a conviction. He was invited to take the easy way out on Page 9 of this record: Mr. Arens says this:

"Now, Mr. Chairman, on the basis of that explanation of the pertinency of the question which I have posed to this witness, I respectfully suggest that you now order and direct this witness either to answer the question or to in-[fol. 93] voke his privileges under the fifth amendment against giving testimony which could be used against him in a criminal proceeding." Now, there was a way out. All he had to do was humble himself before the committee and say I think that I have done something which might be a crime. I acknowledge that I am in the shadow of justifiable criminal prosecution and I want to keep my mouth shut.

Gentlemen, don't you think that if he hadn't been motivated by some very unusual motive that he wouldn't have done it? If he had been a member of the communist party, gentlemen, he'd have said that he takes the fifth amendment and have no prosecution, no peril, no subpoena, no nothing. But what did he do. He stood his ground and he would not acknowledge that he was guilty of crime. He would not

take the fifth amendment. He took the first amendment and I submit to you, gentlemen, respectfully, that the reason he took it was because he felt that in doing so ultimately in this trial and whatever else may follow he was striking a blow for the freedom of the American citizen when the long shadow of Washington bureaucracy casts itself over the people of our country.

They tell you that he was arrogant. I submit that you can read that report and you will find courtesy and decency. You will find a man standing up for his rights. If it is arrogant for an American citizen to stand up for his rights, then I glory in the arrogance of the American citizen, the American citizens who stood up for their rights against King George, III, the American citizens in this country who stood magnificently for their rights in 1860 and 1865. [fol. 94] Gentlemen, this was a characteristic of American men because they stand up for their rights.

Let me try to explain to you what was in the mind of Carl Braden when he made this refusal on the ground of the first amendment and what I think is the determinative question because, after all, government policy, social policy is made by judicial decision and the jurors are the grass roots from whence that policy springs. 172 years ago when the American Constitution was established, the first amendment was written into it as the beginning of the ten amendments that constituted the Bill of Rights. It provided that Congress shall make no law respecting an establishment of religion or the free exercise thereof; no abridging freedom of speech or of the press or the right to the people peaceably to assemble and petition their government. Why did they do that, Gentlemen? Because, as the tenth amendment says, the power of this country rests not in the king, not in the hierarchy, in the limited public servants; but it rests in the people of the United States. The humble and the great. It is the public opinion of the people of this country and from that soil of public opinion grew the government, as the great oaks grow from the soil of the forest. It all arises from a great public opinion of a democratic state and democratic society. It is essential that that public opinion shall be enlightened:

My distinguished colleague on the government's side of the table tells us that this is the first time that this has come to the State of Georgia. It is the first time that the long shadow of governmental power has cast itself over this fair state. But if they succeed in this prosecution, I fear that it will not be the last.

[fol. 95] Gentlemen, the power to investigate has a subtle effect upon public opinion. If the Un-American Activities Committee comes down here and summons half a dozen people out of the community, say a bank clerk and a railroad man and a government employee, what happens? They ask them if they are Communists. They take the fifth amendment and they go back home to their jobs and they get fired. They go out to get another job and they can't get it. They are marked men in the community in which they live and in every other community. Like the commentators that have been taken off the air. Like the screen writers that have been destroyed in their profession. Like a lawyer that I represented in the State of Florida who is about to lose his position at the bar.

John Marshall said in giving an opinion in the Supreme Court years ago that the power to tax involves the power to destroy. I submit to you gentlemen that the power to investigate involves the power to destroy the rich soil of a free public opinion from which democracy grows when it is subjected to the salty or cynical watering of investigations by the Un-American Activities Committee is like the soil of the forest that has been treated with salt or arsenic. It does not grow. A blow has been struck at the fundamental structure of the American states and the freedom of the American people.

Gentlemen, that is why Carl Braden stands before you today. He could have avoided it by simply taking the easy way out that was offered to him by the Constitution of the United States and by the suggestion of the chairman of the committee. Pretty soft. But he saw fit to stand his ground and he stood his ground for you and he stood his [fol. 96] ground for me, and he stood his ground not on something that would come from Moscow, but he stood on the principles of American liberty.

Gentlemen, let us come down out of the clouds to the detailed duties that have fallen upon this Court and this jury. The Government of the United States has been a great government. It has protected us in war and in peace. It has governed our foreign ~~regulations~~ relations. It has defended us effectively in war. I submit to you, gentlemen, if our government is to be destroyed tonight, which God forbid, it will be destroyed by the internal decay that sets in, when the Americans are unwilling to stand for their liberty, when Americans are unwilling to take positions that peril their freedom, when juries complacently say, yes, Mr. Arens said it was a Communist organization. Mr. Arens said he was a communist. Mr. Arens and the chairman ordered him to answer and he didn't answer. He must obey. My friends, we have the Un-American Activities Committee today. We have the Civil Rights Committee over in Alabama. And, if I read the papers, what will we have tomorrow? What will we have? We will have the long arm of federal bureaucracy reaching out from the capitol down to Georgia, down to Florida, down to Alabama. Some minor ~~bucanraacy~~ bureaucrat will come down from Washington and say that you must answer, the citizens of Georgia and the citizens of the South must tremble and obey. Gentlemen, that is the consequence of prosecutions of this sort. That is the consequence of the verdict they ask you for. If you render that verdict, you strike the first blow against the foundation, the internal foundation of the American liberty. They may be conscientious, although I doubt it, in [fol. 97] coming down here and making a hoop and hooray about Communism, but they are twenty times as dangerous as any Communist that ever crossed the seas because they strike at the moral fibers of the people of the United States and that is the basis of American liberty.

Gentlemen, I will urge you no further. You are American Citizens. You are conscious of the heritage of American citizens. You are Southern citizens. There sits an American citizen, a Southern citizen. Differing perhaps with some of us, but an inheritor of the same magnificent tradition that has made our country what we live for and what we admire. He stands before you to establish a principle, that he doesn't have to grapple in the dust like a slave

or servant, but he submits himself to the jury with trust and confidence that he has done his duty and that you men are conscious of this duty, conscious of the magnificent heritage of liberty that stands behind us, conscious of the well being and safety of our society. I leave it with you with confidence and trust.

Mr. Sparks: Just a few moments in conclusion, gentlemen. I confined myself in the opening statement to issues which I thought were presented, factual issues which you are to determine. Counsel for the defense, I submit, did not so confine himself. As I hear his argument, it involved itself into an attack on the House Un-American Activities Committee. If I'm not mistaken in what I heard him say, he said that congressmen whom we elected to run our country for us, to make our laws and legislate, are twenty times more dangerous than any Communist. I cannot agree with [fol. 98] that and I don't believe any member of this jury agrees with any such statement as that. He has talked about the courage of Mr. Braden in refusing to answer and refusing to take the fifth amendment which could have kept him immune from prosecution. May I suggest in answer to that argument, why was it necessary for him to do either one? Why didn't he just answer the questions with a simple yes or no. This argument by the defense has involved itself into an attack, a virtual attack on the House Un-American Activities Committee and an attack on Congress. He in effect has said that this is an invasion of the South, that the South is being invaded simply because this is one of the first cases ever tried here. The reason it's one of the first cases ever tried here is because it's one of the first times that Congress has ever come down here to Atlanta. These representatives held this hearing down here, Representative Willis from Louisiana, Representative Tuck from Virginia, former governor of Virginia, Congressman Jackson from California. Two Southerners out of three down here in Atlanta, Georgia investigating un-American activities, Communist activities in the South, and counsel holds up Mr. Braden as a hero, a man defiant, standing up for American manhood because he refuses to answer the questions of three of our elected representatives who are down here on a mission involving the security of this country.

Gentlemen, no one has a greater regard for the rights of the individual than I do, or the United States attorneys or this Court, for individual rights as guaranteed by the first amendment. However, there are occasions, when the rights of an individual to maintain privacy must be weighed in the balance on a scale against the interests of [fol.99] national security and when the interest of national security predominates, then whatever rights he has under the first amendment as an individual, I say must be subordinated to the rights of the security of this country. If national security is destroyed, where is our Constitution?

Gentlemen, I know you are tired and I know you want to get on with the decision of the case. I still say that there is only one verdict in my opinion based on the evidence in this case and that verdict is guilty on all six counts.

CHARGE TO THE JURY.

The Court: Members of the Jury, now that you have heard the evidence and the argument of counsel, the time has come to instruct you as to the law governing the case. Although you as jurors are the sole judge of the facts, you are duty bound to follow the law as stated in the instructions of the Court and to apply the law so given to the facts as you find them from the evidence before you. You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole. Neither are you to be concerned with the wisdom of any rule of law, regardless of any opinion that you may have as to what the law ought to be. It would be a violation of your sworn duty to base a verdict upon any view of law than that given in the instructions of the Court.

You have been chosen and sworn as jurors in this case to try the issues of fact presented to the allegations of the indictment and the denial made by the not guilty plea of the accused. You are to perform this duty without bias or prejudice as to any party. The law does not permit [fol.100] jurors to be governed by any sympathy, prejudice or public opinion. The accused and the public expect that you will carefully and impartially consider all the

evidence, follow the law as stated by the Court and reach a just verdict regardless of the consequences.

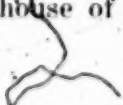
Now, the law presumes a defendant to be innocent of crime. Thus, a defendant, although accused, begins the trial with a clean slate, with no evidence against him, and the law permits nothing but legal evidence presented before the jury to be considered in support of any charge against the accused. So the presumption of innocence alone is sufficient to acquit a defendant unless the jurors are satisfied beyond a reasonable doubt of the defendant's guilt from all the evidence in the case.

A reasonable doubt is a fair doubt based upon common sense and arising from the state of the evidence. It is rarely possible to prove anything to an absolute certainty. Proof beyond a reasonable doubt is established if the evidence is such as you would be willing to rely and act upon in the most important of your own affairs.

The defendant is not to be convicted on mere suspicion or conjecture. A reasonable doubt may arise not only from the evidence produced, but also from a lack of evidence. Since the burden is upon the prosecution to prove the accused guilty beyond a reasonable doubt of every essential element of the crime charged, the defendant has the right to rely upon the failure of the prosecution to establish such proof. A defendant may also rely upon the evidence brought out on cross examination of the witnesses for the prosecution. The law does not impose upon a defendant the duty of producing any evidence. A reasonable doubt exists [fol. 101] in any case when, after a careful and impartial consideration of all the evidence, the jurors do not feel convinced to a moral certainty that a defendant is guilty of the charge.

Now, of course, an indictment is but a formal method of accusing a defendant of crime. It is not evidence of any kind against the accused and does not create any presumption or permit any inference of guilt.

Now, in this case the defendant is charged in a six count indictment with six separate violations of the federal statute, that is, Volume II, U. S. Code, Section 192, making it unlawful for anyone to refuse to obey proper command of either house of Congress or any of its committees to



appear and give testimony or to produce papers. The offense charged is frequently referred to as contempt of Congress, but it does not involve any personal animosity or dislike for a congressional committee or for any of its members, nor does it require any discourteous conduct on the part of the witness.

The statute provides that every person who, having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry, wilfully makes default or who, having appeared, refuses to answer any questions pertinent to the question under inquiry shall be deemed guilty of a misdemeanor punishable as provided by the statute.

The charge made against the defendant rests solely on the second part of the statute which makes it unlawful for a person appearing before a committee of Congress to refuse to answer any question pertinent to the question under inquiry.

[fol. 102] Now, the indictment here charges in the introduction as follows:

On July 30, 1958, in the Atlanta Division of the Northern District of Georgia, a subcommittee of the Committee on Un-American Activities of the House of Representatives was conducting hearings pursuant to Public Law 601, Section 121, 79th Congress, Second session, 60 Statute at Large, Page 828, and as to House Resolution 5, 85th Congress, the defendant, Carl Braden, appeared as a witness before that subcommittee at the place and on the date above-stated and was asked questions which were pertinent to the question then under inquiry. Then and there the defendant knowingly, wilfully and unlawfully refused to answer those pertinent questions. The allegations of this introduction are adopted and incorporated into the counts of the indictment which follow, each of which count will in addition merely describe the questions which were asked of the defendant and which he refused to answer.

Count 1, And did you participate in a meeting here at that time?

Count 2, Who solicited the quarters to be made available to the Southern Conference Educational Fund?

Count 3, Are you connected with the Emergency Civil Liberties Committee?

Count 4, Did you and Harvey O'Connor, in the course of your conference there in Rhode Island, develop plans and strategies outlining work schedules for the Emergency Civil Liberties Committee?

Count 5, Were you a member of the Communist Party the instant you affixed your signature to that letter?

[fol. 103] Count 6, I would just like to ask you whether you, being a resident of Louisville, Kentucky, have anything to do there with the Southern Newsletter?

Now, to this indictment the defendant, of course, has entered his plea of not guilty and that forms the issue that you are to determine here in this case.

Now, I have decided those matters which it is my responsibility to determine. You are not concerned with whether the committee has a right to ask the questions or why it asked them. You are not concerned with whether this defendant was or was not a Communist or a subversive or what his answers might have been, and you are not concerned that his failure to answer may even have been upon the advice of counsel or his lawyer. In this connection you are to decide merely whether he intentionally refused to answer without regard to any motive that he may have had. Such refusal does not require evil intent or bad motive. Therefore, good motive is no defense. Even in refusing upon advice of counsel is not reason or justification. You are not to consider the validity of the objections made by the defendant to answering the questions concerned in this indictment or whether the claimed invalidity of the committee, lack of jurisdiction of the committee, or lack of pertinency of the question because these are matters for my decision and I have decided as a matter of law that the committee was properly authorized by Congress, that the questions were pertinent to the subject matter under inquiry and that the objections he made and the reasons he gave do not justify refusal to answer these questions. I will have more to say later about what constitutes intentional refusal to answer.

[fol. 104] Now, I have determined as a matter of law and I instruct that the Committee on Un-American Activities was during all times material here a valid committee of the House of Representatives and had the power to conduct this hearing and to conduct it through a subcommittee. Chairman Walter had the power to appoint a subcommittee of three or more members of his committee to conduct this hearing and to hear the testimony of this defendant.

You will note that each count in the indictment alleges that the refusal was with reference to a question pertinent to the matter under inquiry. You will not concern yourselves with this allegation as it involves a matter of law which it is the Court's duty to determine and which has been determined. I have determined as a matter of law that the committee had the right to ask these questions and the defendant had the duty to answer these questions under the conditions that I will later explain.

With these matters of law out of the way, the first question for you to decide is whether Mr. Walter, the chairman of the full committee, designated Congressmen Willis, Tuck and Jackson to constitute a subcommittee to hear the testimony on the occasion when the defendant allegedly appeared before it on July 30, 1958. You will further decide whether those congressmen undertook to act as such subcommittee and whether at least two members of such subcommittee were actually present throughout the testimony of the defendant.

In that connection, I direct your attention to the fact that it has been stipulated that such a quorum was present and I have instructed you and now instruct you that you may accept that and other stipulations as true without further proof.

[fol. 105] If you so find beyond a reasonable doubt, as I have defined that term to you, then the Court instructs you that this was a validly constituted subcommittee of the Un-American Activities Committee of the House of Representatives and as such had authority then and there to ask the questions alleged in this indictment.

The next question for you to determine is whether the defendant appeared before the subcommittee in this district on or about July 30, 1958. I do not understand that

some of these matters are contested, but here you must nevertheless find them beyond a reasonable doubt before you may convict the defendant. Then you must determine whether the subcommittee or its staff director asked the particular questions charged in each count in the indictment. Here again I do not understand that this was contested, but you must nevertheless find that the questions were asked and make this finding beyond a reasonable doubt before you can convict the defendant. If you find beyond a reasonable doubt that these questions were asked the defendant, as I have already said, it becomes the witness' duty to answer and to answer by giving a reply responsive to the questions under the conditions which I will explain to you.

Now, you are next to determine whether the defendant failed to make an answer to the questions charged in each count in the indictment. Here again I do not understand that this is contested, nevertheless you must find beyond a reasonable doubt that the defendant did fail to answer the particular question before you can convict him. Now, as to each count, if you so find that there was such a failure to answer, you will determine whether it was wilful failure, [fol. 106] and, therefore, a refusal as charged in the indictment. The word wilful does not mean that the refusal or failure to comply would necessarily be for evil or malicious purposes. That is beside the point. The reason for the refusal is immaterial so long as the refusal was a deliberate and intentional one rather than mere accident or oversight or inadvertence, or the result of a misunderstanding.

Now, I have already said that merely because the defendant may have misunderstood his right and may have thought that he had the right to refuse to answer because of the advice of counsel or for some other reason, that wouldn't be the type of misunderstanding that I have in mind. The kind of misunderstanding that I have in mind is a situation where he didn't understand that he was required to make an answer, that it hadn't been brought home to him that the questions asked were pertinent or that the subcommittee had overruled his objections and expected him to answer, notwithstanding his objections, or where a

failure to answer was due to a misunderstanding of the question itself. If you believe beyond a reasonable doubt with respect to each count that the defendant refused to answer the question alleged in that count in the indictment and that that refusal was intentional and deliberate after a clear demand by the subcommittee to answer, notwithstanding his objection, then that aspect of the proof of the case would be satisfied.

Now, to summarize what I have just said, a witness who fails to answer after making an objection must be informed by the subcommittee that his objection or reason for not answering was not accepted by the subcommittee and that demand is made upon him to answer, notwithstanding his [fol. 107] objection. In simple language, the law requires that the witness finally be given a choice to answer or refuse to answer after his objections have been made.

Under the facts in this case there is one final matter for you to determine. You will recall that this defendant objected to answering on the ground that the subcommittee had no right or power to ask these questions. I have already charged you that the subcommittee did have such power and you are not concerned and are not to consider the question of the committee's power or jurisdiction. Here in addition the defendant objected to answering each question claiming that the particular question was not pertinent or relevant to the subcommittee's investigation. Now, the Court charges you that you cannot find the defendant guilty unless you find from the evidence beyond a reasonable doubt that he refused to answer the question or questions set forth in the indictment and that such question or questions being pertinent to the question under inquiry by the committee therein described as the Court had charged you, that such pertinency was made known with reasonable certainty to the defendant at the time. The Court charges you that to be pertinent to a question under inquiry within the meaning of the law and the charges in the indictment, the questions asked must have been known by the defendant at the time of the committee's hearing to have a reasonable relation to the subject allegedly under inquiry as set forth in the bill of particulars.

Now, in this case the government contends that the subject matter under inquiry was the extent, character and

objects of Communist colonization and infiltration in the textile and other basic industries located in the South, [fol. 108] Communist Party propaganda activity in the South, and the entry and dissemination within the United States of foreign Communist Party Propaganda. If you find beyond a reasonable doubt that the subject matter under inquiry by the subcommittee at the time the defendant appeared before it was as the government contends and that the questions that the defendant allegedly refused to answer were either related to that subject matter with undisputed clarity from the wording of the particular questions, or from the course of the entire questioning of this defendant, or both, or if you find that the subcommittee made an explanation reasonably capable of describing to the ordinary person in the defendant's situation what the subject matter under inquiry was and the way the particular question related to it, then this final aspect of the criminal intent involved in this charge would have been found as to these refusals to answer these questions.

Now, to summarize what I had just said with respect to the criminal intent involved in this offense of refusing to answer these questions, the law requires that a witness stating an objection to answering must be given an opportunity by the subcommittee to make a deliberate final choice whether to answer or not and that choice to answer or not must be an informed choice of the sort that I have just mentioned.

I have given you the necessary elements of the offense charged in this indictment which involves questions of fact to be decided by you. I will briefly summarize them.

First, the offense, if committed, took place in this district.

[fol. 109] Second, that a subcommittee was designated by the chairman consisting of three members and that at least two members thereof met on the date charged in the indictment and were present throughout the testimony of this defendant:

Third, that the defendant appeared before said subcommittee on that date.

Fourth, he was asked the questions specified in each count in the indictment.

Fifth, that he wilfully refused to answer these questions after having been directed to do so.

Sixth, that the subject matter under inquiry and the relationship or pertinency of the individual questions to that subject matter would have been clear to the average person in the defendant's position.

Now, gentlemen of the jury, you will consider each count of the indictment and if you find every one of these factual elements which I have left for your consideration to be true and you find that beyond a reasonable doubt, it would then be your duty to convict the defendant on that count. If you do not so find or if you have a reasonable doubt about any one of these factual elements, you must give the defendant the benefit of that doubt and acquit him on that count.

Now, gentlemen of the jury, as in all legal investigations, the subject of this legal investigation is the discovery of the truth. What you want to undertake to do in this case is to find out what the truth of it is, and if after considering all of the evidence applying to the facts as you find them [fol. 110] to be and the law that the Court has given you in charge, you are convinced to a moral and reasonable certainty and beyond a reasonable doubt of the defendant's guilt, then it is your duty to convict him. If you are not so satisfied or if you have a reasonable doubt on your mind as to his guilt, it is equally your duty to give the defendant the benefit of that doubt and acquit. Whatever you believe the truth of the case to be, that should be your verdict, bearing in mind that you are not responsible for the consequences of your verdict but you are responsible for its truth. Whatever your verdict, you will enter it on the blank provided by the clerk for you, inserting in that blank the term "guilty" or "not guilty" however you find the defendant to be as to that particular count, bearing in mind that you must consider each count separately and determine the guilt or not guilt of the defendant as to each particular count. If you find the defendant guilty, the form of that verdict would be: We the jury find the defendant, Carl Braden, guilty, naming the Count or counts upon which you find him guilty. If you find him not guilty, then the form of that verdict would be: We the jury find the defen-

dant not guilty, inserting in the blank as to that particular count or counts that you reached that verdict, the term "not guilty." Date it and let your foreman sign it and return it into open Court. You may retire just outside the Courtroom door and await further instructions.

(The jury retired to the corridor.)

The Court: Any exceptions to the charge on behalf of the defendant?

[fol. 111] EXCEPTIONS OF COUNSEL FOR DEFENDANT

Mr. Coe: Your Honor, the defendant excepts to the portion of the charge left—leaving the jury free to consider the question of extent, character and objects of Communist colonization and infiltration in the textile and other basic industries located in the South because it is not found upon the evidence.

The defendant makes the same exception to permitting the jury to consider the entry and dissemination into the United States of foreign Communist Party propaganda on the ground it was not founded upon the evidence.

The defendant further excepts to the withdrawal by the Court of the issue of pertinency and materiality of questions from the jury on two grounds. First, that the Court's charge that the questions are as a matter of law material is founded on a misconstruction of the law and evidence and, secondly, that that is a ~~practical~~ factual issue.

The defendant would likewise request the Court to make it clear to the jury, and it was not completely clear to me, that they might find him guilty on some counts and not guilty on others.

The Court: Bring back the jury.

(The jury returned to the box.)

The Court: Gentlemen of the jury, I may not have made it clear that it is within your province to find the defendant guilty on one count and not guilty on other counts, or you may find the defendant not guilty on one count and guilty on other counts. In other words, it is within your province [fol. 112] to find the defendant guilty or not guilty on any one or all of the counts. You may separate the finding as

to each count in the indictment and you write on that finding how you find him, whether he is guilty or not guilty as to that particular count. You may make separate and distinct findings as to each count. You may convict him on one or more. You may acquit him on one or more. You may convict him on one or all or you may acquit him on all. However you find him to be, you so specify as to each particular count in the indictment.

(The jury retired to consider the case.)

The Court: Let the record show that the original Exhibit No. 9 is retained in Court and the immediate copy will be marked by the clerk as Exhibit No. 9 and furnished to the jury and the manner of deletion has been agreed upon by counsel for the government and the defendant.

Mr. Coe: That is correct.

Filed April 21, 1959.

[fol. 113]

IN UNITED STATES DISTRICT COURT

MOTION OF DEFENDANT TO ARREST JUDGMENT—Filed
January 24, 1959

Comes now the Defendant and respectfully moves the Court to arrest judgment upon the verdict in the above entitled cause, because:

- (1) The indictment states no offense.
- (2) Because the indictment shows upon its face that the questions for the refusal to answer which he was charged, are absolutely privileged under the provisions of the First Amendment to the Constitution of the United States.
- (3) Because the indictment shows upon its face that the questions for refusal to answer which he was charged, are completely immaterial to any subject of proper legislative investigation.

John M. Coe, Leonard Boudin, Attorneys for Defendant.

[fol. 114]

IN UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA,

vs.

CARL BRADEN:

JUDGMENT AND COMMITMENT—February 2, 1959

No. 21,757 Criminal Indictment in Six (6) Counts for violation of (2 U.S.C. 192).

On this 2nd day of February, 1959 came the attorney for the government and the defendant appeared in person and by counsel, John M. Coe, Esq.

It Is Adjudged that the defendant has been convicted upon his plea of Not Guilty and a verdict of guilty of the offense of refusing to answer questions before a Subcommittee of Un American Activities as charged in the Indictment and the Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court.

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Twelve (12) Months on count one; Twelve (12) Months on count two; Twelve (12) Months on count three; Twelve (12) Months on count four; Twelve (12) Months on count five; [fol. 115] and Twelve (12) Months on count six of the indictment in the above-entitled cause, and that the execution of these sentences on counts one, two, three, four, five and six shall run concurrently.

Motion for a New Trial having been filed by the defendant,

It Is Further Ordered that the said defendant be enlarged upon bond in the sum of \$1000.00, pending the decision of the Court on Motion for a New Trial.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

Boyd Sloan, United States District Judge.

The Court recommends commitment to:

IN UNITED STATES DISTRICT COURT

MOTION OF DEFENDANT FOR NEW TRIAL AND ORDER THEREON
—March 12, 1959

The above named defendant has filed a motion for a new trial in the above case on the grounds that the Court erred:

1. In holding that the authorizing resolution of the House Un-American Activities Committee was sufficient [fol. 116] to justify interrogation of a witness under compulsory process upon the subjects and by the questions embodied in the indictment.

2. In charging the jury as a matter of law that the questions embodied in the indictment were pertinent to the subject matter under inquiry.

3. In refusing to charge the jury that if the questions embodied in the indictment sought information privileged under the First Amendment to the Constitution of the United States, the jury should acquit the defendant.

The defendant has also filed a motion to arrest judgment on the verdict in the case on the grounds that the indictment:

1. States no offense.

2. Shows upon its face that the "questions for the refusal to answer which he was charged, are absolutely privileged under the provisions of the First Amendment to the Constitution of the United States."

3. Shows upon its face that such questions are completely immaterial to any subject of proper legislative investigation.

The above motions are now properly before the Court for determination under the Local Rules of this Court and after due consideration thereof, it is

[fol. 117] Ordered that defendant's motion for a new trial and his motion to arrest judgment upon the verdict be, and they are hereby overruled and denied.

This the 12th day of March, 1959.

Boyd Sloan, United States District Judge.

Filed March 13, 1959.

IN UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

[Title omitted]

NOTICE OF APPEAL—Filed March 18, 1959

Name and address of Appellant: Carl Braden of 4403 Virginia Avenue, Louisville (11) Kentucky.

Names and Addresses of Appellant's Attorneys: John M. Coe, P.O. Box 29, Pensacola, Florida; Leonard B. Boudin, 25 Broad Street, New York (4), New York; Conrad J. Lynn, Suite 1117--141 Broadway, New York, New York; and C. Ewbank Tucker, 1625 West Kentucky Street, Louisville, Kentucky.

Offense; Contempt of Congress (Violation Title 2 U. S. C. Sec. 192) Counts 1 to 6 both inclusive.

Judgment of conviction of the above named offense, of date February 2nd, 1959, upon which the following sentence [fol. 118] was imposed, to-wit: Twelve months imprisonment on each count, to run concurrently.

I, the above named Appellant, hereby appeal to the United States Court of Appeals for the Fifth Circuit from the above stated judgment.

Dated March 17, 1959.

John M. Coe, Louis B. Boudin, Conrad J. Lynn,
C. Ewbank Tucker, Appellant's Attorneys.

Designation of Contents; Omitted from the printed record pursuant to designation of counsel as to printing record, copied at Page 1.

[fol. 119]

IN UNITED STATES DISTRICT COURT

STATEMENT OF POINTS BY DEFENDANT—Filed March 18, 1959

In accordance with the provisions of Rule #75(d), Defendant (Appellant) files the following statement of points:

(1) That the Court erred in denying Defendant's motion to dismiss.

(2) That the Court erred in overruling Defendant's motion for judgment of acquittal.

(3) Defendant was subpoenaed by the Committee because he had exercised his right of petition to Congress in criticizing the Committee's decision to hold hearings in Atlanta, in supporting the Supreme Court's decision in the field of integration and in opposing legislation which would overcome the effect of the Supreme Court's decision in *Commonwealth v. Nelson*, 350 U. S. 497.

(4) That the Court erred in charging the jury as a matter of law that the questions set forth in the indictment were pertinent to the matter under inquiry.

(5) That the Court erred in overruling Defendant's motion in arrest of Judgment.

John M. Coe, Leonard B. Boudin, Conrad J. Lynn,
C. Ewbank Tucker, Appellant's Attorneys.

[fol. 120]

IN UNITED STATES DISTRICT COURT

ORDER FOR TRANSMITTAL OF ORIGINAL EXHIBITS—

March 18, 1959

The Court being of opinion that the original papers and exhibits herein should be sent to the Appellate Court in lieu of copies, it is:

Ordered that the Clerk of this Court do transmit to the Clerk of the United States Court of Appeals for the Fifth Circuit, with the record on appeal in this cause, all of the original exhibits offered in evidence that may be called for by the designation of either party, in lieu of copies thereof.

Done and Ordered at ~~Atlanta~~, Gainesville, in the Northern District of Georgia, this 18th day of March, A. D., 1959.

Boyd Sloan, United States District Judge.

Cross Designation of Contents of Records on Appeal;

Order Extending Time to File Record on Appeal;

Stipulation as to Corrections in the Transcript;

Omitted from the printed record pursuant to designation of counsel as to printing record copied at Page 2.

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[fol. 121]

IN UNITED STATES DISTRICT COURT

U. S. EXHIBIT No. 1.

Admitted Jan. 22, 1959.

Case No. 21757.

H. Res. 2 In the House of Representatives, U. S.,
January 3, 1957.

Resolved, That a message be sent to the Senate to inform that body that a quorum of the House of Representatives has assembled; that Sam Rayburn, a Representative from

the State of Texas, has been elected Speaker; and Ralph R. Roberts, a citizen of the State of Indiana, Clerk of the House of Representatives of the Eighty-fifth Congress.

Attest:

(Seal)

RALPH R. ROBERTS;
Clerk.

IN UNITED STATES DISTRICT COURT

U. S. EXHIBIT No. 2.

Admitted Jan. 22, 1959.

Case No. 21757.

H. Res. 2 In the House of Representatives, U. S.,
January 7, 1959.

Resolved, That Ralph R. Roberts, of the State of Indiana, be, and he is hereby, chosen Clerk of the House of Representatives;

[fol. 122] That Zeake W. Johnson, Junior, of the State of Tennessee, be, and he is hereby, chosen Sergeant at Arms of the House of Representatives;

That William M. Miller, of the State of Mississippi, be, and he is hereby, chosen Doorkeeper of the House of Representatives;

That H. H. Morris, of the State of Kentucky, be, and he is hereby, chosen Postmaster of the House of Representatives;

That Reverend Bernard Braskamp, Doctor of Divinity, of the District of Columbia, be, and he is hereby, chosen Chaplain of the House of Representatives.

Attest:

(Seal)

RALPH R. ROBERTS,
Clerk.

IN UNITED STATES DISTRICT COURT

U. S. EXHIBIT No. 3.

Admitted Jan. 22, 1959.

Case No. 21757.

H. Res. 5 In the House of Representatives, U. S.,
January 3, 1957.

Resolved, That the rules of the House of Representatives of the Eighty-fourth Congress, together with all applicable provisions of the Legislative Reorganization Act of 1946, as amended, be, and they are hereby, adopted as the rules [fol. 123] of the House of Representatives of the Eighty-fifth Congress.

Attest:

(Seal)

RALPH R. ROBERTS,
Clerk.

IN UNITED STATES DISTRICT COURT

U. S. EXHIBIT No. 9.

Admitted Jan. 22, 1959.

Case No. 21757.

Tuesday, July 29, 1958

United States House of Representatives, Subcommittee of
the Committee on Un-American Activities, Atlanta, Ga.

Public Hearing.

A subcommittee of the Committee on Un-American Activities met, pursuant to call, at 10:07 a. m., in the Courtroom, Old Post Office Building, Atlanta, Ga., Honorable Francis E. Walter (the chairman) presiding.

Committee members present: Representatives Francis E. Walter, of Pennsylvania; Edwin E. Willis, of Louisiana;

William M. Tuck, of Virginia; and Donald L. Jackson, of California.

[fol. 124] Staff members present: Richard Arens, staff director, and George Williams and Frank Bonora, investigators.

The Chairman. The Committee will be in order.

Let there be incorporated in the body of the record the Resolution of the Committee on Un-American Activities authorizing and directing the holding of the instant hearings here in Atlanta.

(The information follows:)

Be It Resolved, that a hearing by the Committee, or a subcommittee thereof, to be held in Atlanta, Georgia, or at such other place or places as the Chairman may designate, on such date or dates as the Chairman may designate, be authorized and approved, including the conduct of investigations deemed reasonably necessary by the staff in preparation therefor, relating to the following subjects and having the legislative purposes indicated:

1. The extent, character and objects of Communist colonization and infiltration in the textile and other basic industries located in the South, and Communist Party propaganda activities in the South, the legislative purpose being:

- (a) To obtain additional information for use by the Committee in its consideration of Section 16 of H. R. 9352, relating to the proposed amendment of Section 4 of the Communist Control Act of 1954, prescribing a penalty for knowingly and wilfully becoming or remaining a member [fol. 125] of the Communist Party with knowledge of the purposes or objectives thereof; and

- (b) To obtain additional information, adding to the Committee's overall knowledge on the subject so that Congress may be kept informed and thus prepared to enact remedial legislation in the National Defense, and for internal security, when and if the exigencies of the situation require it.

2. Entry and dissemination within the United States of foreign Communist Party propaganda, the legislative pur-

pose being to determine the necessity for, and advisability of, amendments to the Foreign Agents Registration Act designed more effectively to counteract the Communist schemes and devices now used in avoiding the prohibitions of the Act.

3. Any other matter within the jurisdiction of the Committee which it, or any subcommittee thereof, appointed to conduct this hearing, may designate.

The Chairman. Let there likewise be incorporated in the body of the record the order of appointment by myself of the subcommittee to conduct the hearings.

(The information follows:)

June 24, 1958.

To: Mr. Richard Arnes
Staff Director

House Committee on Un-American Activities

Pursuant to the provisions of law and the rules of this Committee, I hereby appoint a subcommittee of the Committee [fol. 126] on Un-American Activities, consisting of Representative Edwin E. Willis, as Chairman, and Representatives William M. Tuck and Donald L. Jackson, as associate members, to conduct hearings in Atlanta, Georgia, Tuesday, Wednesday, and Thursday, July 29, 30, and 31, 1958 at 10:00 A. M. on subjects under investigation by the Committee, and take such testimony on said days or succeeding days as it may deem necessary.

Please make this action a matter of Committee record.

If any Member indicates his inability to serve, please notify me.

Given under my hand this 24th day of June, 1958.

FRANCIS E. WALTER,
Chairman, Committee on Un-American Activities.

Representative Francis E. Walter, chairman of the full committee presided over the hearing and made the following statement:

The hearings which begin today in Atlanta are in furtherance of the powers and duties of the Committee on Un-American Activities, pursuant to Public Law 601 of the 79th Congress, which not only establishes the basic jurisdiction of the committee but also mandates this committee, along with other standing committees of the Congress, to exercise continuous watchfulness of the execution of any laws the subject matter of which is within the jurisdiction of the committee.

[fol. 127] In response to this power and duty, the Committee on Un-American Activities is continuously in the process of accumulating factual information respecting Communists, the Communist Party, and Communist activities which will enable the committee and the Congress to appraise the administration and operation of the Smith Act, the Internal Security Act of 1950, the Communist Control Act of 1954, and numerous provisions of the Criminal Code relating to espionage, sabotage, and subversion. In addition, the committee has before it numerous proposals to strengthen our legislative weapons designed to protect the internal security of this Nation.

In the course of the last few years, as a result of hearings and investigations, this committee has made over 80 separate recommendations for legislative action. Legislation has been passed by the Congress embracing 35 of the committee recommendations and 26 separate proposals are currently pending in the Congress on subjects covered by other committee recommendations. Moreover, in the course of the last few years numerous recommendations made by the committee for administrative action have been adopted by the executive agencies of the Government.

The hearings in Atlanta are in furtherance of a project of this committee on current techniques of the Communist conspiracy in this Nation. Today, the Communist Party, though reduced in size as a formal entity, is a greater menace than ever before. It has long since divested itself of unreliable elements. Those who remain are the hard-core, disciplined agents of the Kremlin on American soil. Most of the Communist Party operation in the United States [fol. 128] today consists of underground, behind-the-scenes manipulations. The operation is focused at nerve centers

of the Nation and masquerades behind a facade of humanitarianism.

We know that the strategy and tactics of the Communist Party are constantly changing for the purpose of avoiding detection and in an attempt to beguile the American people and the Government respecting the true nature of the conspiracy. As we on the Committee on Un-American Activities seek to develop factual information on these changing strategies and tactics for our legislative purposes, we are constantly met with numerous and unfounded charges respecting the nature of our work and our objectives. Such charges will not dissuade us from our duty. We seek the facts and only the facts. Insofar as it is within the power of this committee, as a part of the United States Congress, we shall obtain the facts and we shall do so within the framework of carefully prescribed procedures of justice and fair play.

I have long felt that the effectiveness of this committee appears to be in direct ratio to the volume of attack against it which is waged by the Communist Party and those under Communist discipline. Accordingly, I was interested to take note some several months ago of the intensified activity against the Committee on Un-American Activities and the Federal Bureau of Investigation which is now being promoted by the Communist Party. This campaign was the subject of a special booklet which the committee issued entitled "Operation Abolition." I was somewhat gratified to receive a letter from Mr. J. Edgar Hoover, Director of [fol. 129] the F. B. I. in regard to this booklet, part of which letter reads as follows:

This booklet depicts another example of the apparent ease with which the Communist have been able to enlist the support of misguided individuals to assist them in obscuring their subversive workings. Certainly the real meaning of civil liberties is not understood by these Communist apologists.

Your Committee's role in safeguarding our freedom is well known to every patriotic citizen, and real Americans are not going to be fooled or misled by efforts to discredit your vital task.

Preliminary investigations by the staff of this committee indicate that the principal Communist Party activities in the South are directed and manipulated by agents, who are headquartered in Communist nests in concentration points in the metropolitan areas of the North.

May I emphasize that the purpose of the committee here in Atlanta is to develop facts with reference to a pattern of operation and not to attempt to exhaust the subject matter. We have not subpoenaed witnesses for these hearings merely for the sake of exposure or to put on a show. We are engaged in the serious business of tracing the operations in the United States of a world-wide conspiracy which is determined to destroy us. Should we attempt to interrogate in these hearings even a significant percentage of all possible witnesses on whom we have lead information regarding Communist activity in the South, we would be [fol. 130] here for many months to the neglect of our work elsewhere.

It is a standing rule of this committee that any person identified as a member of the Communist Party during the course of the committee hearings will be given an early opportunity to appear before this committee, if he desires, for the purpose of denying or explaining any testimony adversely affecting him. It is also the policy of the committee to accord any witness the privilege of being represented by counsel; but within the provisions of the rule of this committee, counsel's sole and exclusive prerogative is to advise his client.

I would remind those present that a disturbance of any kind or an audible comment during the hearings will not be permitted. This is a serious proceeding in which we are earnestly trying to discharge an important and arduous duty with the general objective of maintaining the security of this great Nation.

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Wednesday, July 30, 1958.

United States House of Representatives, Subcommittee of
the Committee on Un-American Activities, Atlanta,
Ga.

Public Hearing.

The subcommittee of the Committee on Un-American Activities met, pursuant to call, at 10 a. m. in the Court-[fol. 131] room, Old Post Office Building, Atlanta, Ga., Honorable Edwin E. Willis (chairman of the subcommittee) presiding.

Committee members present: Representatives Edwin E. Willis, of Louisiana; William M. Tuck, of Virginia; and Donald L. Jackson, of California.

Staff members present: Richard Arens, staff director, and George Williams and Frank Bonora, investigators.

Mr. Willis. The subcommittee will please come to order. Counsel, will you call your first witness?

Mr. Arens: Mr. Carl Braden, kindly come forward.

Mr. Braden: I have two counsel, Mr. Chairman.

Mr. Willis: All right. Please raise your right hand. Do you solemnly swear that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Braden: I do.

[fol. 132] Testimony of Carl Braden, Accompanied By Counsel, ~~C.~~ Ewbank Tucker and John M. Coe.

Mr. Arens: Kindly identify yourself by name, residence, and occupation.

Mr. Braden: My name is Carl Braden. I live at 4403 Virginia Avenue, in Louisville, Kentucky. I am a worker in the integration movement in the South, ~~having been~~ being employed by the Southern Conference Educational Fund, Inc. Which is a Southwide interracial organization working to bring about integration, justice, and decency in the South.

Mr. Arens: Mr. Braden, you are appearing today in response to a subpoena that was served upon you by the House Committee on Un-American Activities?

Mr. Braden: I am. I was vacationing in Rhode Island when a United States marshal took me off the beach and handed me a subpoena.

Mr. Arens: And you are represented by counsel?

Mr. Braden: I am.

Mr. Arens: Counsel, will you kindly identify yourselves?
[fol. 133] Mr. Tucker: C. Ewbank Tucker of Louisville,
Kentucky; Louisville, Kentucky, member of the Kentucky
State Bar.

Mr. Coe: John M. Coe of Pensacola, Florida, member of
the Bar of Florida and the Supreme Court of the United
States.

Mr. Arens: In what capacity are you employed, Mr.
Braden, with the Southern Conference Educational Fund?

Mr. Braden: I am employed as field secretary, and I am
also associate editor of their newspaper, the Southern
Patriot, which is a paper that disseminates information on
integration in the South and about the people who are work-
ing for integration.

Mr. Arens: How long have you been so employed, please,
sir?

Mr. Braden: A year.

Mr. Arens: And what was your employment immediately
prior to your present employment?

Mr. Braden: I was employed—I was unemployed as a
result of harassment and prosecution resulting from my
efforts to bring about integration in Louisville, Kentucky.
[fol. 134] Mr. Arens: And what was your last principal
occupation?

Mr. Braden: I was a newspaper man, employed as a copy
editor by the Louisville Courier-Journal.

Mr. Arens: How long did that employment endure?

Mr. Braden: I was employed on two different occasions.
You mean my entire newspaper career or—

Mr. Arens: Just the highlights, please, sir.

Mr. Braden: All right. I was a reporter and rewrite man
for the Louisville Herald-Post from 1930 to 1936; a reporter
and editor for the Cincinnati Inquirer; city editor of the
Harlan, Kentucky, Daily Enterprise; labor reporter for
the Louisville Times; and then editor for the Courier-
Journal, in addition to being editor of several labor news-
papers.

Mr. Arens: Would you give us now please just a word
about your education?

Mr. Braden: I studied from 1928 to 1930 for the Catholic
priesthood. I might add that I am now a member of the
Episcopal Church.

[fol. 135] Mr. Arens: When did you complete your formal education?

Mr. Braden: I did not attend school after 1930.

Mr. Arens: Mr. Braden, I understand you to say you were vacationing in Rhode Island when you were served with the subpoena to appear before this committee, is that correct?

Mr. Braden: That is right, sir.

Mr. Arens: With whom were you visiting in Rhode Island?

Mr. Braden: I was visiting Harvey O'Connor.

Mr. Arens: Can you tell us, if you please, sir, what his occupation is?

Mr. Braden: Harvey O'Connor is a writer.

Mr. Arens: Is he connected with the Emergency Civil Liberties Committee?

Mr. Braden: He is the chairman of it, the national chairman.

[fol. 136] Mr. Arens: And where did you come from to your point in Rhode Island; where was your immediate point of departure before you arrived in Rhode Island?

Mr. Braden: Mr. Arens, I believe this is outside the scope of any possible—this is not pertinent to any possible investigation that this committee might be conducting, and I also believe that it is an invasion of my right to associate under the first amendment, and I therefore decline to answer.

Mr. Arens: Mr. Chairman, I respectfully suggest the witness be ordered and directed to answer; and I should like, for the purpose of making the record absolutely clear, to explain to the witness now the pertinency of the question.

Sir, it is our understanding that you are now a Communist, a member of the Communist Party; that you have been identified by reputable, responsible witnesses under oath as a Communist, part of the Communist Party which is a tentacle of the international Communist conspiracy. It is our information further, sir, that you as a Communist have been propagating the Communist activity and the Communist line principally in the South; that you have been masquerading behind a facade of humanitarianism; that you have been masquerading behind a facade of emo-

tional appeal to certain segments of our society; that your purpose, objective, your activities, are designed to further the cause of the international Communist conspiracy in the United States.

[fol. 137] Now, there is pending before the Committee on Un-American Activities pursuant to its authority, its duty, and its responsibility legislation. Indeed, the chairman of the Committee on Un-American Activities sometime ago introduced a bill, H. R. 9937, which has numerous provisions which are being considered by the Committee on Un-American Activities. Some of these provisions undertake to tighten the security laws respecting registration of Communists; some of these provisions undertake to tighten the security laws respecting the dissemination of Communist propaganda. Some of these security laws preclude certain types of activities, the very nature of which we understand you have been engaged in.

In addition to that, sir, there is pending before the Committee on Un-American Activities a series of proposals that are not yet incorporated into legislative form, which the committee is considering. In addition to that, the Committee on Un-American Activities has a mandate from the Congress of the United States to maintain a surveillance over the administration and operation of numerous security laws that are presently on the statute books, including the Internal Security Act, the Communist Control Act of 1954, the Foreign Agents Registration Act, espionage and sabotage statutes.

It is for that reason and for these reasons which I have just described to you that this committee has come to Atlanta, Georgia, for the purpose of assembling factual material which the committee can use, in connection with other material which it has assembled, in appraising the administration and operation of the laws and in making a studied judgment upon whether or not the current provisions of the laws are adequate and whether or not each or any of these proposals pending before the committee should not be recommended for enactment.

If you, sir, now will tell us, in response to the last outstanding principal question, where you have been immediately prior to your sojourn in Rhode Island with Harvey

O'Connor, who has been identified as a hard-core member of the Communist conspiracy, head of the Emergency Civil Liberties Committee, and ~~other~~ another organization that ~~have~~ has been cited by a congressional committee as a Communist front.

If you will tell us sir, now, of your activities in this connection, that will add to the fund of knowledge of this committee so that it can more adequately discharge the duties and responsibilities which it has upon it.

Now, Mr. Chairman, on the basis of that explanation of the pertinency of the question which I have posed to this witness, I respectfully suggest that you now order and direct this witness either to answer the question or to invoke his privileges under the fifth amendment against giving testimony which could be used against him in a criminal proceeding.

Mr. Willis: I think, sir, that a sufficient foundation has been laid to make the question completely pertinent, and I direct you to answer the question.

Mr. Braden: In the first place, Mr. Chairman, Mr. Arens has been grossly misinformed; and it still remains a fact that my beliefs and my associations are none of the business of this committee.

[fol. 139] Mr. Willis: In other words, you are maintaining your attitude of refusing to answer?

Mr. Braden: On the grounds of the first amendment to the United States Constitution, which protects the right of all citizens to practice beliefs and associations, freedom of the press, freedom of religion, and freedom of assembly. On that ground I stand, sir.

While you are investigating, Mr. Arens, you ought to investigate some of the atrocities against the Jews and Negroes in the South, such as the picketing of the Atlanta Journal last Sunday morning.

Mr. Arens: Now, kindly tell the committee, if you please, sir, are you now, this minute, a member of the Communist Party?

Mr. Braden: I stand on my previous position under the first amendment, that such a question has no pertinency to any legislative purpose and it violates my belief.

Mr. Willis: Would you kindly defer one second?

Proceed with your next question, Mr. Counsel.

Mr. Arens: Excuse me just a moment. Mr. Chairman, may we have the reporter read back just the last line or so, so I am thoroughly conversant?

[fol. 140] Mr. Willis: What was the outstanding question? The outstanding question was: Are you now a member of the Communist Party? If I am not mistaken, the witness refused to answer the question, but did not invoke the privileges against self-incrimination provided in the fifth amendment to the Constitution of the United States. That is correct, is it not?

Mr. Braden: And I stated my grounds on the first amendment, on the grounds that the question has no possible pertinency to any legislation.

Mr. Arens: Yes. I want the record to be absolutely clear, sir, so we do not put this committee in the ludicrous position of a complete, thorough explanation in response to each invocation of alleged lack of pertinency, that the explanation which I gave to you as to the pertinency of the question is understood to be applicable to similar questions which I am intending to propose to you.

Mr. Braden: Should I take that up with counsel, or what?

Mr. Arens: I am just announcing for the record now.

Mr. Braden: You are doing this—

[fol. 141] Mr. Arens: If, as, and when this particular proceeding is subject to judicial review, it will be thoroughly understood that the questions which I propose to propound to you today will be geared to the pertinency which I summarily explained to you a few moments ago.

Mr. Braden: Is this pertinent insofar as the integration movement is concerned?

Mr. Arens: Sir, kindly tell us—

Mr. Willis: Let the Chair understand the situation. And I think that should be made perfectly clear. I think the question of pertinency of these hearings has been completely explained and is a matter of record. Without repetition, you are now on your guard as to why these questions are being propounded to you, all of them; and let that basis be the general basis for the question.

Now do I understand that you have refused to answer the question as to whether or not you are now a member of the Communist Party solely upon the invocation of the provisions of the first amendment, but that you have not invoked the protection of the fifth amendment to the Constitution. Is that correct?

Mr. Braden: That is right, sir. I am standing on the Watkins, Sweezy, Koenigsberg, and other decisions of the United States Supreme Court which protect my right, and [fol. 142] the Constitution as they interpret the Constitution of the United States, protecting my right to private belief and association.

Mr. Arens: And let it be clear also, sir, that I do not propose, nor have I thus far at any time undertaken, to probe at private beliefs. We are interested here solely in your participation in an organization which is controlled by a Godless, atheistic conspiracy, which is sweeping the world and which ultimately threatens, and will threaten, the integrity of this Nation; and if this committee of the United States Congress cannot solicit from a citizen information respecting the operation within the confines of the border of this Godless, atheistic conspiracy, God help this country.

Mr. Braden: Are you saying integration is communism like they do in Louisiana?

Mr. Arens: Now would you kindly tell us whether or not Mrs. Alberta Ahearn, A-h-e-a-r-n, was in error when she took an oath before the Committee on Un-American Activities and testified that while she was a member of the Communist Party she knew you, sir, as a member of the Communist Party? We would like to now afford you an opportunity to deny that identification while you are under oath, sir. Do you care to avail yourself of that opportunity?

Mr. Braden: I stand on the same grounds as I stood on before. You are probing into private beliefs and associations, which are protected by the first amendment of the United States. The question has no possible pertinency to any legislative purpose. The mandate of this committee is so vague that nobody knows what you are supposed to be investigating.

Mr. Arens: We will tell you now, communism and Communists—

Mr. Braden: Integration is what you are investigating. All the people subpoenaed here are integrationists.

Mr. Jackson: Are all of the people subpoenaed here also Communists?

Mr. Braden: I will leave that to you.

Mr. Jackson: We are trying to determine that fact; and it would certainly seem that when we have testimony under oath which so identifies witnesses, that there must be some flame with all of the smoke.

Mr. Braden: Have any of your witnesses identified the anti-Semite who was picketing the Journal Building Sunday morning, Billy Branam?

Mr. Jackson: Do you suggest that this committee of the Congress should take over the police powers? Do you suggest if somebody was shot on the street corner in Atlanta—[fol. 144] Mr. Braden: That is what you are doing, Mr. Jackson.

Mr. Jackson: Just a moment—that this committee of Congress, which has no such mandate, should go out and make investigation of that particular form of violence? This is an investigation that is bounded by certain very clear-cut and distinct lines, your definition to the contrary. We are told to investigate the extent and scope of propaganda activities within the United States. That is precisely what we are doing. And when you cast doubt, or attempt to cast doubt, on the relevancy of the question when you are in the position you are to influence public opinion through your writings—and I gather through your writings on behalf of the Communist Party—it is very clearly within the purview of this committee to inquire into those activities. I do not care what you think. I have not the slightest interest in—

Mr. Braden: Mr. Arens just asked me—

Mr. Jackson: Slightest interest in your opinions. I am sure that your opinions would be extremely interesting, but I am not interested in them.

What I am interested in, is what are you doing on behalf of the Communist Party? We are not going to be clouded, so far as I am concerned, by talking about integra-

tion and segregation. This committee is not concerned in that. This committee is concerned in what you are doing in behalf of the Communist conspiracy. It may be that your [fol. 145] actions parallel, as the chairman said, a very humanitarian thing, a thing which is emotional and a thing in which many of us are in sympathy.

I don't know but what I made a great contribution to civil rights as you have, as a member of the Congress, because I also voted for a great many things, but I voted for them out of American principles, and I have not agitated for them out of any sympathy for the Communist cause.

Mr. Braden: Anything I do is done by American principles, Mr. Jackson, and you asked me if I think you should be investigating violence; and I think you should be investigating violence against Jews and Negroes in the South, the bombing of synagogues, the bombing of Negro homes. That is the kind of thing you should be investigating.

Mr. Jackson: I suggest that you go before the Congress of the United States and so petition it to change the charge on this committee.

Mr. Braden: Two hundred Negro leaders in the South petitioned the Congress of the United States last week in connection with this hearing in Atlanta.

Mr. Jackson: After looking at some of the names on this list, the letters went into the circular files of many members, because it was quite obvious that a number of names on that letter were names of those that had been closely associated with the Communist Party. Their interest and [fol. 146] major part does not lie with honest integration. Their interest lies with the purposes of the Communist Party. And that is what we are looking into, and let us not be clouding this discussion and this hearing this morning by any more nonsense that we are here as representatives of the United States Government to further, or to destroy, or to have anything to do with, integration. I resent it as an individual member of the Congress.

Mr. Braden: I think the 200 Negro leaders who signed that statement ought to resent your statement about their political affiliations.

Mr. Arens: Now we would like to display to you a copy of this statement which you have just alluded to, which has been received in many quarters in the United States Con-

gress. Did you prepare that open letter which was signed by a number of people and—

Mr. Braden: Shall I read it first?

Mr. Arens: Directed to the United States Congress? Did you prepare that letter? Kindly answer the question.

Mr. Braden: I would like to read the letter, sir.

Mr. Arens: Take your time and read it, yes, sir.

[fol. 147] Mr. Braden: This is an open letter to the United States House of Representatives:

We are informed that the Committee on Un-American Activities of the House of Representatives is planning to hold hearings in Atlanta, Georgia, at an early date.

As Negroes residing in Southern states and the District of Columbia, all deeply involved in the struggle to secure full and equal rights for our people, we are very much concerned by this development.

We are acutely aware of the fact that there is at the present time a shocking amount of un-American activity in our Southern states. To cite only a few examples, there are the bombings of the homes, schools, and houses of worship of not only Negroes but also of our Jewish citizens; the terror against Negroes in Dawson, Ga.; the continued refusal of boards of registrars in many Southern communities to allow Negroes to register and vote; and the activities of White Citizens Councils encouraging open defiance of the United States Supreme Court.

However, there is nothing in the record of the House Committee on Un-American Activities to indicate that, if it comes South, it will investigate these things. On the contrary, all of its activities in recent years suggest that it is much more interested in harassing and labeling as "subversive" any citizen who is inclined to be liberal or an independent thinker.

For this reason, we are alarmed at the prospect of this committee coming South to follow the lead of Senator Eastland, as well as several state investigating committees, in trying to attach the "subversive" label to any liberal white Southerner who dares to raise his voice in support of our democratic ideals.

[fol. 148] It was recently pointed out by four Negro leaders who met with President Eisenhower that one of our

great needs in the South is to build lines of communication between Negro and white Southerners. Many people in the South are seeking to do this. But if white people who support integration are labeled "subversive" by congressional committees, terror is spread among our white citizens and it becomes increasingly difficult to find white people who are willing to support our efforts for full citizenship. Southerners, white and Negro, who strive today for full democracy must work at best against tremendous odds. They need the support of every agency of our Federal Government. It is unthinkable that they should instead be harassed by committees of the United States Congress.

We therefore urge you to use your influence to see that the House Committee on Un-American Activities stays out of the South—unless it can be persuaded to come to our region to help defend us against those subversives who oppose our Supreme Court, our Federal policy of civil rights for all, and our American ideals of equality and brotherhood.

This letter is dated July 22, 1958, which is the day that my subpoena was dated in Washington, D. C., by Congressman Francis Walter. There it is.

Mr. Arens: Now, would you kindly answer just 2 questions with reference to this letter? Question number 1 is: What did you, an identified member of the Communist Party, have to do with this letter?

[fol. 149] Mr. Braden: I will have to stand on my first amendment rights for private beliefs and association on the grounds that the question has no possible pertinency to any legislation.

Mr. Arens: Now question number 2—

Mr. Willis: I think you should be more specific and ask him did he prepare it.

Mr. Arens: Did you prepare the letter, Mr. Braden?

Mr. Willis: Or have anything to do with its preparation?

(The witness conferred with his counsel.)

Mr. Braden: I will have to stand again on the first amendment, the vagueness of the mandate of the committee, and the pertinency of the investigation and the legislative—

Mr. Willis: The Chair wants to make this statement for the record: Of course, let me assure you that this committee is not in accord with your alleged grounds as the basis for refusing to answer these questions.

On the contrary, we take a different view. You have 2 counsel, and I know you realize why I am making this clear. You have your choice. You may allow your counsel to confer with you. We think a basis has been made; we are quite familiar, I assure you, with the decisions to which you refer. And I want to make the record perfectly clear.

Mr. Braden: Yes, sir.

Mr. Willis: I think you understand the position of this committee.

Mr. Braden: Yes, sir, I do. And I hope you understand my position.

Mr. Jackson: Mr. Chairman, I want to join the chairman in his statement. I too, am not satisfied with the reason he gives for declination to answer the question. I think the record should show very affirmatively that there is an instance of communication signed by a number of individuals and addressed to Members of the Congress of the United States.

There is a very strong possibility that that letter was prepared by a Communist; and it points up one of the things that this committee has been trying to put across, that well-meaning people pursuing a very worthwhile goal are very frequently not sufficiently advised as to what they are doing when they lend their names to various petitions, letters, and so forth. A very strong likelihood exists—and we cannot know because of the refusal of the witness to answer whether he prepared this letter—but a strong likelihood exists that the letter in question was prepared under Communist direction; that those who signed it signed a document which was prepared by the Communist Party for their own purposes.

Thank you, Mr. Chairman.

Mr. Braden: I am sure the people who signed the letter will appreciate those aspersions, Mr. Jackson.

Mr. Jackson: The people who did what?

Mr. Braden: The people who signed the letter, I am sure, will appreciate the aspersions on their intelligence.

Mr. Jackson: If they will pay a little more attention to what they are doing and have a little less concern about some of the other non-important things, I think everyone concerned will get along a lot better.

Mr. Braden: I think that would be true of the committee.

Mr. Jackson: I still say that the attribution on the letterhead appears that it has been prepared by a Communist organization that has been cited.

Mr. Arens: Mr. Chairman, I respectfully suggest that the entire document that I displayed to the witness be ap-[fol. 152] propriately marked and incorporated by reference in the record.

Mr. Willis: Let the document be so incorporated.

(Document marked "Braden Exhibit No. 1," and retained in committee files.)

Mr. Braden: Will that include the signers, Mr. Chairman, the names of the signers also?

Mr. Arens: Now, Mr. Braden, please tell the committee when you were last here in the Atlanta area pursuant to your work.

(The witness conferred with his counsel.)

Mr. Braden: I am trying to think exactly when it was, sir. The latter part of May.

Mr. Arens: Of this year?

Mr. Braden: Yes, sir.

Mr. Arens: Were you here pursuant to the official assignment which you have as a field organizer or field secretary, as it were, of the Southern Conference Educational Fund?

[fol. 153] Mr. Braden: Yes, sir. I travel all over the South in the interest of integration.

Mr. Arens: And where did you hold your meeting here in May?

Mr. Braden: Did you ask me about a meeting?

Mr. Arens: Did you have a meeting here in May?

Mr. Braden: Again I will have to stand on the first amendment on the grounds that this is an invasion of private belief and association; that the question has no possible pertinency to any possible legislative purpose; and that the mandate establishing this committee is too vague for anybody to know what you are investigating.

Mr. Arens: Mr. Chairman, I hope and expect and am relying upon the request that I made that the explanation of pertinency which I gave at the outset of this interrogation carries over with reference to each of these principal questions.

Mr. Braden: That is understood, sir.

Mr. Arens: Were you in the Atlanta area in December of 1957?

[fol. 154] Mr. Braden: I beg your pardon, sir?

Mr. Arens: Were you in the Atlanta area in December of 1957?

Mr. Braden: Yes.

Mr. Arens: And did you participate in a meeting here at that time?

Mr. Braden: Again the first amendment; same grounds, sir. Do I have to repeat it each time, or is it understood each time?

Mr. Willis: Well, it is understood that you are referring to the first amendment.

Mr. Braden: The challenging of the pertinency of the question, challenging the mandate of the committee, and my rights under the first amendment.

Mr. Arens: Then, Mr. Chairman, if there is to be an understanding on this record that there is, in response to each of these principal questions, a challenge to the pertinency of the question, I respectfully suggest and request that the record likewise in each instance, unless otherwise directed by the chairman, show a direction to the witness to answer the question.

[fol. 155] Mr. Willis: Yes. In order to establish the basis for any proceeding that might conceivably be instituted, do you understand that you are ordered to answer these questions, meaning that the committee disagrees with your position and is insisting upon pertinency? Do we understand that?

Mr. Braden: Yes. I understand, and I disagree with the committee, and I will understand that you are directing me to answer each question in order to expedite the matter so that we will not be wasting the committee's time and everybody else's time on this.

Mr. Arens: I will not, however, be precluded—

Mr. Willis: Let me suggest this: I think our budget for national defense is something like, oh, \$38 to \$40 billion per year. And I think we all know that the trouble makers are the masters of the Kremlin—Communist conspiracy, worldwide I am talking about—and here the representatives of the people in Congress feel compelled to spend the taxpayers' money, this huge sum. And to indicate what a billion dollars is, it comes to my mind that, as a matter of arithmetic, a billion minutes have not ticked or gone by since the birth of Christ, and we are spending almost \$40 billion a year to fight this very thing to defend ourselves.

Now, sir, you are placing yourself in a position of saying that Congress has no right to inquire into the Communist conspiracy in America.

Next question.

[fol. 156] Mr. Braden: I am not saying you have no business at that. I am just saying your mandate is so vague that nobody knows what you have a right to investigate, and the Supreme Court has indicated—

Mr. Willis: You will be surprised how familiar we are with the decisions.

Mr. Braden: The Watkins—

Mr. Willis: That is all right. Proceed.

Mr. Arens: Now, Mr. Chairman, I should like, notwithstanding the general direction that the explanation of pertinency carries over to the principal questions, to add a brief explanation with reference to the question which I intend to propound in just a moment.

Before this committee, Mr. Braden, a day or so ago, Mr. Armando Penha took an oath and testified respecting Communist Party techniques—Mr. Penha was in the Communist conspiratorial operation in this country at the behest of the Federal Bureau of Investigation, and he served there for 8 years. In the course of his testimony yesterday he said, in effect on this issue, that the comrades are under a di-

rective to penetrate non-Communist organizations, fine, patriotic, humanitarian organizations for the purpose of worming their way in, to further the Communist objectives. [fol. 157] I am now going to display to you, sir, some photographs, showing you and your wife entering the American Red Cross Building in Atlanta, December of 1957, at which time it is our understanding you were a participant in sessions there. We should like to have you, first of all, look at these photographs and tell the committee whether or not they are true and correct reproductions of your physical features as you were entering the American Red Cross in December of 1957, a fine, humanitarian, patriotic organization.

Mr. Braden: Before we get to that, Mr. Arens, you said that Mr. Penha made some statements there.

Mr. Arens: Mr. Chairman, I respectfully suggest the witness be ordered and directed to answer the question. This record is crystal clear if I ever saw one.

Mr. Braden: Mr. Chairman, the man made a lot of statements.

Mr. Arens: I do not think the committee needs to be harassed or haggled with by an identified Communist.

Mr. Willis: Answer the question.

Mr. Arens: Now, sir, kindly answer the question.

[fol. 158] Mr. Braden: Shall I take these pictures one by one?

Mr. Arens: Kindly tell us whether or not these pictures are a true and correct reproduction of yourself and your wife entering the American Red Cross Building in December of 1957.

Mr. Braden: While we are at it, my wife is not here, so I guess I can identify all of us, let's see. This is a picture of me and James A. Dombrowski, executive secretary of the Southern Conference Educational Fund, and Mrs. Anne Braden, myself and Aubrey W. Williams, publisher of the Southern Farm and Home, who was director of the National Youth Administration under Franklin D. Roosevelt, one of the many liberal white Southerners in the South who has been under attack for his position on integration.

While we are on the question of the Southern Conference Educational Fund, Mr. Chairman, since I think we—

Mr. Willis: Please do not—

Mr. Arens: I respectfully suggest, Mr. Chairman, the witness now be ordered and directed to answer this particular question.

Mr. Braden: I did answer it. I said what the picture showed.

[fol. 159] Mr. Arens: You did not, sir. Do those pictures fairly and honestly and accurately represent you and your wife as you were entering the American Red Cross in December of 1957?

Mr. Braden: These are pictures taken from a building across the street, apparently by persons spying on the board of the Southern Conference Educational Fund which met at the American Red Cross Building here in Atlanta last December 15. This is a common technique for harassing liberals in the South.

Mr. Arens: Now, did the Southern Conference Educational Fund meet in the American Red Cross Building in December of 1957?

Mr. Braden: It is a matter of public record that they did, and you probably have a copy of the board meetings—

Mr. Arens: Excuse me. Who solicited the quarters to be made available to the Southern Conference Educational Fund?

Mr. Braden: I will have to stand on my previous refusal to answer on the same grounds, first amendment and so forth.

Mr. Arens: Did you participate in the session?

[fol. 160] Mr. Braden: Same grounds.

Mr. Arens: The record is clear, is it not, Mr. Chairman and counsel to the witness, that in response to each of these refusals to answer, the Chair has given a direction and there has been an appropriate explanation of the pertinency?

I see you nod your head. The reporter cannot get a yes from your nod.

Mr. Braden: I understand. My counsel and I understand that.

Mr. Arens: Now, sir, are you connected with the Emergency Civil Liberties Committee?

Mr. Braden: Same ground.

Mr. Willis: You mean you refuse to answer on the same ground?

Mr. Braden: Yes, sir. I refuse to answer on the same ground. It being, you know—do we have to go through it each time or will it be understood, sir?

Mr. Arens: Was your association with Harvey O'Connor, an identified Communist, in Rhode Island in furtherance [fol. 161] of the work of the Emergency Civil Liberties Committee?

Mr. Braden: I was on vacation in Rhode Island, Mr. Arens, and you sent a subpoena up there and took me off my vacation where it was cool and brought me down here in Atlanta where it is 90 degrees.

Mr. Jackson: It is just as hot for the committee, I might add.

Mr. Braden: You can always go back to Washington.

Mr. Jackson: That is not much improvement.

Mr. Arens: Now kindly answer the question. Did you and Harvey O'Connor, in the course of your conferences there in Rhode Island, develop plans and strategies outlining work schedules for the Emergency Civil Liberties Committee?

Mr. Braden: Same answer on the same grounds, Mr. Chairman; same refusal to answer on the same ground.

Mr. Arens: Now, in addition to the letter attacking this committee—and we are used to it—by the Southern Conference Educational Fund, have you, as a field representative or field organizer of the Southern Conference Educational Fund, promoted, stimulated, political pressure, or attempted political pressure, on the United States Congress with reference to security measures pending in the Congress?

Mr. Braden: I am afraid the question is too vague for an answer, Mr. Chairman.

Mr. Arens: I will be specific then, sir. I will display, if you please, sir, a photostatic reproduction of a letter on the letterhead of the Southern Conference Educational Fund, signed Carl and Anne Braden, field secretaries.

Mr. Braden: May we have it read into the record?

Mr. Arens: I am going to display it to you—in which, among other things, the recipient of the letter, "Dear Friend," is asked to write their Senators and Congressmen to oppose S. 654, S. 2646, and H. R. 977, all of which are security measures pending in the United States Congress.

Kindly tell this committee while you are under oath, sir, whether or not that photostatic reproduction of that letter is true and correct and valid.

Mr. Braden: I will have to read it first.

"Dear Friend"—

[fol. 163] Mr. Willis: After you read it—are you going to just read it, or will you answer the question as to whether you signed it or not; if it proves—

Mr. Braden: It will indicate from the letter that I signed it, I think, I mean whether I did or not. If it is a letter I wrote, it is bound to have my name on it.

Dear Friend:

We are writing to you because of your interest in the Kentucky "sedition" cases, which were thrown out of Court on the basis of a Supreme Court decision declaring state sedition laws inoperative.

There are now pending in both houses of Congress bills that would nullify this decision. We understand there is real danger that these bills will pass.

We are especially concerned about this because we know from our own experience how such laws can be used against people working to bring about integration in the South. Most of these state statutes are broad and loosely worded, and to the officials of many of our Southern states integration is sedition. You can imagine what may happen if every little local prosecutor in the South is turned loose with a state sedition law.

It is small comfort to realize that such cases would probably eventually be thrown out by the Supreme Court. Before such a case reaches the Supreme Court, the human beings involved have spent several years of their lives fighting off the attack, their time and talents have been diverted from the positive struggle for integration, and

money needed for that struggle has been spent in a defensive battle.

[fol. 164] It should also be pointed out that these bills to validate state sedition laws are only a part of a sweeping attack on the U. S. Supreme Court. The real and ultimate target is the Court decisions outlawing segregation. Won't you write your two senators and your congressman asking them to oppose S. 654, S. 2646, and H. R. 977. Also ask them to stand firm against all efforts to curb the Supreme Court. It is important that you write—and get others to write—immediately as the bills may come up at any time.

Cordially yours,

CARL AND ANNE BRADEN,
Field Secretaries.

Mr. Arens: Did you sign that letter?

Mr. Braden: Our signature is on the letter.

Mr. Arens: Were you a member of the Communist Party the instant you affixed your signature to that letter?

Mr. Braden: I refuse to answer on the same ground previously stated, Mr. Chairman.

Mr. Jackson: Mr. Chairman—

Mr. Arens: Mr. Braden, are you connected in any way with the Southern Newsletter?

[fol. 165] Mr. Braden: Who is that?

(The witness conferred with his counsel.)

Mr. Arens: I might explain to you. We had a man who has been identified as a Communist—

Mr. Arens: Eugene Feldman—who lives in Chicago, Illinois. He is the editor of the Southern Newsletter. We had him before the committee yesterday, at which time we displayed to him the application for a post office box made on behalf of the Southern Newsletter, a publication which is developed in Chicago, which is sent to a post office box in Louisville, Kentucky, and then mailed out over the South. I would just like to ask you whether or not you, being a resident of Louisville, Kentucky, have anything to do there with the Southern Newsletter?

Mr. Braden: I think you are now invading freedom of the press, Mr. Arens and Mr. Chairman. I object to your invasion of the freedom of the press, and I also decline to answer the question on the same grounds. You are not only attacking integrationists, you are attacking the press.

Mr. Arens: We have no further questions, if you please, Mr. Chairman.

[fol. 166] Mr. Willis: Any questions, Governor?

Mr. Tuck: I have no questions.

Mr. Jackson: I would say anyone who labors under the delusion that the Communist press is anything close to free is certainly making a very serious mistake.

However, I think, Mr. Counsel, with reference to the letter sent out by the Southern Conference Educational Fund and signed by a number of individuals, there may conceivably be some of those who signed the letter who did not realize that it was sponsored by a Communist front. For that reason I think, in all fairness, that those who might desire, if there are any who might desire, to withdraw their names from that letter before it becomes a part of the official archives of our Committee on Un-American Activities should be given opportunity to do so on request of the committee.

Mr. Braden: Mr. Chairman, since he made charges against—

Mr. Willis: He is not making charges. He is making a statement for the record.

Mr. Braden: Southern Conference being a Communist front.

[fol. 167] Mr. Jackson: I am told the Internal Security Subcommittee of the Committee on Judiciary of the United States Senate has so characterized it.

Mr. Braden: I think we ought to be allowed to introduce in evidence a brochure showing what the Southern Conference Educational Fund is about. Give decency a chance in the South.

Mr. Arens: In view of the distinguished Congressman's observation on the Southern Conference Educational Fund, the organization which has been cited as a Communist front with which this man has a connection as an identified Com-

munist is the Emergency Civil Liberties Committee. The Southern Conference Educational Fund itself is, for all practical purposes, the successor organization to the Southern Conference for Human Welfare, which itself had been cited as a Communist front. The Senate Internal Security Subcommittee ran an investigation of the Southern Conference Educational Fund—and I say in passing that I happen to have been identified with the Internal Security Subcommittee at that time and did the interrogating of the witnesses.

The report of the Internal Security Subcommittee with reference to the Southern Conference Educational Fund concludes substantially as follows—this is not an exact quotation; it is only from memory—that an objective appraisal from the record compels the conclusion that the Southern Conference Educational Fund is, for all practical [fol. 168] purposes, operating under the same leadership and for the same objective as the Southern Conference for Human Welfare.

Mr. Braden: May we have the record show, then, Mr. Chairman that the Southern Conference Educational Fund was not specifically listed as he said—

Mr. Jackson: Very well, Mr. Chairman.

Mr. Braden: Originally.

Mr. Arens: That is one of the purposes why we wanted to interrogate you, because you are an identified Communist by a reliable, responsible witness who placed her liberty on the line and said, "While I was in the Communist Party, I knew him, to a certainty, as a member of the Communist Party conspiracy." That is you. You are now the field representative in this committee. We may desire eventually to consider a citation of the Southern Conference Educational Fund on the basis of the information which we are now and elsewhere developing.

[fol. 169]

IN UNITED STATES DISTRICT COURT

CLERK'S CERTIFICATE

United States of America,
Northern District of Georgia. ss..

I, C. B. Meadows, Clerk of the United States District Court in and for the Northern District of Georgia, do hereby certify that the foregoing and attached 151 pages contain a true, full, complete and correct copy of the original record and all proceedings, (except plaintiff's original physical exhibits Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 9A, 10, 11, 12, 13, 14, 15, and 16) in the matter of United States of America vs. Carl Braden No. 21757, Atlanta Division as specified in the designation of contents of record herein, and as the same remain of record and on file in the Clerk's Office of the said District Court at Atlanta, Georgia.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the said District Court, at Atlanta, Georgia, this May 25, 1959.

C. B. Meadows, Clerk, United States District Court,
Northern District of Georgia, By Ruth M. Stilwell, Deputy Clerk.

(Seal)

[fol. 170]

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

MINUTE ENTRY OF ARGUMENT AND SUBMISSION—
October 7, 1959

(omitted in printing)

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
No. 17705

CARL BRADEN, Appellant,
versus

UNITED STATES OF AMERICA, Appellee.

Appeal from the United States District Court for the
Northern District of Georgia.

OPINION—December 10, 1959

Before Hutcheson, Cameron and Jones, Circuit Judges.

Jones, Circuit Judge: The appellant, Carl Braden, was convicted of each of the six counts of an indictment charging contempt of Congress under 2 U.S.C.A. § 192,¹ arising [fol. 172] from his refusal to answer certain questions at a hearing of a Subcommittee of the Committee on Un-American Activities of the House of Representatives. He has appealed from the conviction.

Complying with a subpoena, the appellant appeared before the Subcommittee in Atlanta, Georgia. He was accom-

¹ "Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than \$1,000 nor less than \$100 and imprisonment in a common jail for not less than one month nor more than twelve months."

panied by two attorneys. After being sworn the appellant identified himself as Field Secretary of the Southern Conference Fund, Inc., which, he said, was "a southwide interracial organization working to bring about integration, justice and decency in the South." He was also the associate editor of the Southern Patriot, a newspaper published by the Southern Conference Educational Fund which, said the appellant, "disseminates information on integration in the South and about the people who are working for integration." The appellant testified that the subpoena of the Committee had been served on him while he was visiting in Rhode Island. In reply to a question of counsel for the Committee, he stated that he was visiting Harvey O'Connor, National Chairman of the Emergency Civil Liberties Committee. He was asked to state the point from which he departed to the State of Rhode Island. The appellant expressed the belief that the question was not pertinent to any question that the Committee might be investigating, and that the question was an invasion of his right to as- [fol. 173] sociate under the First Amendment. He declined to answer. The Committee counsel gave the appellant an explanation of the pertinency of the question, saying:

"Sir, it is our understanding that you are now a Communist, a member of the Communist Party; that you have been identified by reputable, responsible witnesses under oath as a Communist, part of the Communist Party which is a tentacle of the international Communist conspiracy. It is our information further, sir, that you as a Communist have been propagating the Communist activity and the Communist line principally in the South; that you have been masquerading behind a facade of humanitarianism; that you have been masquerading behind a facade of emotional appeal to certain segments of our society; that your purpose, objective, your activities, are designed to further the cause of the international Communist conspiracy in the United States.

"Now, there is pending before the Committee on Un-American Activities pursuant to its authority, its

duty, and its responsibility legislation. Indeed, the chairman of the Committee on Un-American Activities sometime ago introduced a bill, H.R.9937, which has numerous provisions which are being considered by the Committee on Un-American Activities. Some of these provisions undertake to tighten the security laws respecting the registration of communists; some of these provisions undertake to tighten the security laws respecting the dissemination of communist propaganda. Some of these security laws preclude certain types of activities, the very nature of which we understand you have been engaged in.

[fol.174] "In addition to that, sir, there is pending before the Committee on Un-American Activities a series of proposals that are not yet incorporated into legislative form, which the committee is considering. In addition to that, the Committee on Un-American Activities has a mandate from the Congress of the United States to maintain a surveillance over the administration and operation of numerous security laws that are presently on the statute books, including the Internal Security Act, the Communist Control Act of 1954, the Foreign Agents Registration Act, espionage and sabotage statutes.

"It is for that reason and for these reasons which I have just described to you that this committee has come to Atlanta, Georgia, for the purpose of assembling factual material which the committee can use, in connection with other material which it has assembled, in appraising the administration and operation of the laws and in making a studied judgment upon whether or not the current provisions of the laws are adequate and whether or not each or any of these proposals pending before the committee should be recommended for enactment.

"If you, sir, now will tell us, in response to the last outstanding principal question, where you have been immediately prior to your sojourn in Rhode Island with Harvey O'Connor, who has been identified as a hard-core member of the communist conspiracy, head

of the Emergency Civil Liberties Committee, another organization that has been cited by a Congressional Committee as a communist front."

[fol. 175] The Chairman of the Subcommittee ruled that a foundation had been laid establishing the pertinency of the question and directed the appellant to answer. The appellant again refused to answer stating that his beliefs and his associations were none of the business of the Committee and asserting that his refusal to answer was "on the grounds of the first amendment to the United States Constitution, which protects the rights of all citizens to practice beliefs and associations, freedom of the press, freedom of religion, and freedom of assembly." He declined to answer many other questions upon the same grounds; adding as an additional ground a claim that the mandate of the Committee was so vague that the subjects it was authorized to investigate could not be determined. The appellant was asked if he was in the Atlanta area in December of 1957, and he gave an affirmative answer. He was then asked, "And did you participate in a meeting here at that time?" He refused to answer and the refusal is charged as an offense by Count One of the indictment. After the appellant had testified that it was a matter of public record that the Southern Conference Educational Fund met in the American Red Cross Building in Atlanta in December, 1957, he was asked, "Who solicited the quarters to be made available to the Southern Conference Educational Fund?" The refusal to answer this question forms the basis of Count Two of the indictment.

Committee Counsel asked the appellant, "Now sir, are you connected with the Emergency Civil Liberties Committee?" He declined to answer and this question is the subject matter of Count Three. He was asked, "Did you and Harvey O'Connor, in the course of your conferences [fol. 176] there in Rhode Island, develop plans and strategies outlining work schedules for the Emergency Civil Liberties Committee?" The appellant's refusal to answer this question resulted in Count Four of the indictment.

The appellant was shown a letter² on the letterhead of Southern Conference Educational Fund. He admitted that it bore the signatures of his wife and himself. He was asked, "Were you a member of the Communist Party the instant you affixed your signature to that letter?" The [fol. 177] refusal to answer this question is the charge of Count Five.

Counsel for the Committee stated to the appellant:

"Eugene Feldman—who lives in Chicago, Illinois. He is the editor of the Southern Newsletter. We had him before the Committee yesterday, at which time we

² "Dear Friend:

"We are writing to you because of your interest in the Kentucky 'sedition' cases, which were thrown out of Court on the basis of a Supreme Court decision declaring state sedition laws inoperative.

"There are now pending in both houses of Congress bills that would nullify this decision. We understand there is a real danger that these bills will pass.

"We are especially concerned about this because we know from our own experience how such laws can be used against people working to bring about integration in the South. Most of these state statutes are broad and loosely worded, and to the officials of many of our Southern states integration is sedition. You can imagine what may happen if every little local prosecutor in the South is turned loose with a state sedition law."

"It is small comfort to realize that such cases would probably eventually be thrown out by the Supreme Court. Before such a case reaches the Supreme Court, the human beings involved have spent several years of their lives fighting off the attack, their time and talents have been diverted from the positive struggle for integration, and money needed for that struggle has been spent in a defensive battle.

"It should also be pointed out that these bills to validate state sedition laws are only a part of a sweeping attack on the U. S. Supreme Court. The real and ultimate target is the Court decisions outlawing segregation. Won't you write your senators and your congressman asking them to oppose S. 654, S. 2646, and H.R. 977. Also ask them to stand firm against all efforts to curb the Supreme Court. It is important that you write—and get others to write—immediately, as the bills may come up at any time.

"Cordially yours,

"Carl and Anne Braden"

displayed to him the application for a post office box made on behalf of the Southern Newsletter, a publication which is developed in Chicago, which is sent to a post office box in Louisville, Kentucky, and then mailed out over the South."

After this statement the appellant was asked, "I would just like to ask you whether or not you, being a resident of Louisville, Kentucky, have anything to do with the Southern News Letter?" The appellant refused to answer this question on the ground that it was an attempted invasion of the freedom of the press as well as the grounds assigned for the refusal to answer the other questions. This refusal to answer is the basis for the charge contained in Count Six.

The appellant moved to dismiss the indictment which motion was overruled and denied. The appellant also filed a motion for a bill of particulars in which the request was made that the Government

"1. State the question under inquiry as to which each of the questions set forth in Counts One through Six is alleged to be pertinent.

2. State the manner in which each of the questions set forth in Counts One through Six is alleged to be [fol. 178] pertinent to the question under inquiry referred to in item 1 above."

There was apparently no order entered on the motion for a bill of particulars. The Government, however, filed a Bill of Particulars as to the information sought in Request Number 1 of the motion in these words:

"The question under inquiry by the Subcommittee of the House Committee on Un-American Activities, on July 30, 1958, as alleged in the indictment, as to which each of the questions set out in Counts 1 through 6 of this indictment is alleged to be pertinent, was:

"The extent, character and objects of Communist colonization and infiltration in the textile and other basic industries located in the South, Communist Party

propaganda activities in the South, and entry and dissemination within the United States of foreign Communist Party propaganda.'"

No objection was made as to the sufficiency of the bill of particulars as a response to the first request nor was the court asked to require the Government to respond to the second request contained in the motion.

Following the verdict of guilty upon each of the six counts, concurrent sentences of twelve months imprisonment on each of the counts were imposed. Motions in arrest of judgment and for a new trial were made and denied.

The assertion is made on behalf of the appellant that he was not called before the Committee for any legislative purpose but rather for the purpose of harassing and [fol:179] exposing him because of his support of integration and civil rights and his opposition to the Committee and to pending legislation. Investigations can be made by the Congress only as to matters which are proper subjects for legislation by it. There is no congressional power to expose for the sake of exposure. *Watkins v. United States*, 354 U. S. 178, 77 S. Ct. 1173, 1 L. Ed. 2d 1273; *Barenblatt v. United States*, 360 U. S. 109, 79 S. Ct. 1081, 3 L. Ed. 2d 1115. The opening statement of the Committee Chairman showed a purpose of investigating current subversive Communist techniques in the South. Legislative purposes might well be furthered by a determination of whether organizations ostensibly active in championing timely objectives, such as integration and civil rights, are in fact being used for the spread of the propaganda of a foreign dominated Communist organization with subversive designs upon our governmental system. If a Congressional Committee ascertained that Communists were attempting to create an appearance of respectability for Un-American activities by seeking the shelter of such an honored and honorable institution as the American Red Cross, that fact would be pertinent to the inquiry it was making.

There was a close relationship shown between the appellant and Harvey O'Connor, who was known to the Committee as a hard-core member of the Communist Party. O'Connor was identified as the National Chairman of the

Emergency Civil Liberties Committee which was stated to be a Communist front organization. The activities of that organization, with which the appellant would have been familiar if he was associated with O'Connor in the development [fol. 180] of plans and strategies, were pertinent to the investigation being made by the Committee.

We need not make any analysis of the pertinency of the questions upon which other counts of the indictment were based. The sustaining of the appellant's conviction on any of the counts would require an affirmance since concurrent sentences were imposed. *Barenblatt v. United States*, *supra*; *Davis v. United States*, 6th Cir. 1959, 269 F. 2d 357; *Estep v. United States*, 5th Cir. 1955, 223 F. 2d 19, cert. den. 350 U. S. 862, 76 S. Ct. 195, 100 L. Ed. 765; *Gilmore v. United States*, 5th Cir. 1955, 228 F. 2d 121; *Morales v. United States*, 5th Cir. 1956, 228 F. 2d 762.

While before the Committee, the appellant's refusals to answer were frequently accompanied by statements or suggestions that the Committee's purpose was the investigation of integration. But one who is known or believed to be a Communist and is suspected of being engaged in Un-American activities does not acquire immunity by adopting the role of a racial integrationist.

During the appearance of the appellant before the Committee he stated his claim of right in refusing to answer the Committee's questions by saying, "I am standing on the *Watkins*,³ *Sweezy*,⁴ *Koenigsberg*,⁵ and other decisions [fol. 181] of the Supreme Court which protect my right, and the Constitution as they interpret the Constitution of the United States to private belief and association." Again he said, "I also believe it is an invasion of my right to associate under the first amendment and I therefore decline to answer." This position, taken at the Committee hearing is renewed here. It is apparent that the appellant miscon-

³ *Watkins v. United States*, *supra*.

⁴ *Sweezy v. New Hampshire*, 354 U.S. 234, 77 S. Ct. 1203, 1 L. Ed. 2d 1311.

⁵ *Koenigsberg v. State Bar of California*, 353 U.S. 252, 77 S. Ct. 722, 1 L. Ed. 2d 810, reh. den. 354 U.S. 927, 77 S. Ct. 1374, 1 L. Ed. 2d 1441.

ceived the effect of the Watkins case. That this is so is clearly demonstrated by the opinion in the Barenblatt case from which we quote these excerpts:

"Undeniably the First Amendment in some circumstances protects an individual from being compelled to disclose his associational relationships. However, the protections of the First Amendment, unlike a proper claim of the privilege against self-incrimination under the Fifth Amendment, do not afford a witness the right to resist inquiry in all circumstances. When First Amendment rights are asserted to bar governmental interrogation resolution of the issue always involves a balancing by the courts of the competing private and public interests at stake in the particular circumstances shown. . . .

"That Congress has wide power to legislate in the field of Communist activity in this Country, and to conduct appropriate investigations in aid thereof, is hardly debatable. The existence of such power has never been questioned by this Court; and it is sufficient to say, without particularization, that Congress has enacted or considered in this field a wide range of legislative measures, not a few of which have stemmed from [fol. 182] recommendations of the very Committee whose actions have been drawn in question here. In the last analysis this power rests on the right of self-preservation, 'the ultimate value of any society,' *Dennis v. United States*, 341 U. S. 494, 509. Justification for its exercise in turn rests on the long and widely accepted view that the tenets of the Communist Party include the ultimate overthrow of the Government of the United States by force and violence, a view which has been given formal expression by the Congress.

"We conclude that the balance between the individual and the governmental interests here at stake must be struck in favor of the latter, and that therefore the provisions of the First Amendment have not been offended." 360 U. S. 109, 126, 127-128, 134.

The foregoing principles are applicable and controlling here. The First Amendment does not give to the appellant any right to refuse to answer the questions which were propounded to him by the Committee.

The district court decided that the questions upon which the indictments were framed were pertinent and so instructed the jury. The appellant, at the close of the trial, objected and made the contention that the pertinency issues should have been submitted to the jury. The same contention is urged on this appeal. We have no doubt but that this question is one of law and was rightly resolved at the trial. *Sinclair v. United States*, 279 U.S. 263, 49 S. Ct. 268, 73 L. Ed. 692.

[fol. 183] Before this Court the appellant says his conviction must be reversed because, after he had made his objections to the questions put to him, he was not expressly directed to answer the questions. After the question on which the first count of the indictment was asked, the appellant said "Again the first amendment; same grounds, sir. Do I have to repeat it each time, or is it understood each time?" The Chairman replied that "It is understood that you are referring to the first amendment." The Staff Director suggested that if there was to be an understanding as to the basis for refusing to answer, there might also be an understanding as to directions to the appellant to answer. The Chairman asked the appellant if he understood that he was ordered to answer and the appellant replied, "I will understand that you are directing me to answer each question in order to expedite the matter so we will not be wasting the Committee's time and everybody else's time on this." Later the Staff Director inquired whether the record was clear that in response to each refusal to answer there had been given a direction to answer, and the appellant said, "I understand. My counsel and I understand." The appellant waived the right to have a specific direction to answer each of the questions to which he made objection and which he refused to answer. He now asserts that he could not waive the requirement of being specifically directed to answer each question. It is required that the witness be ordered to answer a question, where an objection has been made or a refusal to answer has been stated. This requirement is made so that it may be

established beyond doubt, in a criminal prosecution, that [fol. 184] the refusal was intentional and deliberate. The statements of the appellant clearly showed that he and his counsel were fully informed and the request to omit the specific directions to answer was intelligently made by the appellant. He was in no way prejudiced. Due process was in no way denied. If the waiver had been made at a trial before a court we are without doubt that no assignment of error could properly be predicated upon permitting the waiver. *Smith v. United States*, 5th Cir. 1956, 234 F. 2d 385; *Beeler v. United States*, 5th Cir. 1953, 205 F. 2d 454, cert. den. 346 U. S. 877, 74 S. Ct. 130, 98 L. Ed. 385; *Hagans v. United States*, 5th Cir. 1959, 261 F. 2d 924. We see no interest of justice that calls for a different rule here. It might, though, be observed that the First Count upon which the appellant was convicted was for refusal to answer a question after being expressly ordered to give an answer. It follows, as has been stated, that if the conviction on the First Count is upheld there will be an affirmance in view of the concurrent sentences imposed.

The appellant now urges that when he appeared before the Committee the rules as announced in the Watkins opinion justified his belief that the First Amendment protected him in refusing to answer the questions of the Committee, and being so justified he did not have the criminal intent necessary to sustain a conviction for contempt. The offense is the willful refusal to comply with the order of the Committee to answer a pertinent question. The mistaken belief that the law justifies a refusal to answer is not a defense, whether the belief is induced by the misreading of a judicial [fol. 185] opinion, by the advice of counsel or otherwise. *Sinclair v. United States*, *supra*.

The appellant would have us hold that the indictment should have specified the pertinency of each question and would have us reverse his conviction for insufficiency of the indictment. A comparison of the indictment here with that by which Barenblatt was charged will show the lack of merit in this contention. Cf. *Barenblatt v. United States*, D.C. Cir. 1957, 100 App. D.C. 13, 240 F. 2d 875, 877. The appellant also urges that the trial court should have ordered a full response to the requests in the motion for a bill of particulars. We think that the appellant, if he re-

garded the bill of particulars as inadequate, should have said so in an appropriate manner before going to trial. But aside from that, we think there would have been no error if the court had expressly denied the request contained in the motion. The purpose of a bill of particulars is either to supplement the indictment in informing a defendant of facts constituting ingredients of the offense with which he is charged in order that he may prepare his defense or so to perfect the record as to bar a subsequent prosecution. 4 Wharton, Criminal Law and Procedure, 720, § 1867. Pertinency being, as has been shown, a matter of law, the manner in which the questions propounded are pertinent to the inquiry are not proper matters for a bill of particulars. *Rose v. United States*, 9th Cir. 1945, 149 F. 2d 755. It cannot be well contended that the appellant could have been twice tried for the offenses charged in the indictment. We cannot see, and the appellant does not advise us, [fol. 186] how the preparation of his defense would have been helped by any information he sought by the second part of his Motion for a Bill of Particulars. The absence of any order directing the furnishing of any further bill of particulars was not error. *Wong Tai v. United States*, 273 U. S. 77, 47 S. Ct. 300; 71 L. Ed. 545; *Kaufman v. United States*, 6th Cir. 1947, 163 F. 2d 404, cert. den. 333 U. S. 857, 68 S. Ct. 726, 92 L. Ed. 1137, reh. den. 333 U. S. 878, 68 S. Ct. 896, 92 L. Ed. 1154. Cf. *Watts v. United States*, 5th Cir. 1947, 161 F. 2d 511, cert. den. 332 U. S. 769, 68 S. Ct. 81, 92 L. Ed. 354.

Finally, the appellant took and takes the position that the Congress had no power to authorize the Committee investigations and that its Rule XI⁶ under which the investigation here challenged was conducted was so vague and

⁶ "The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (1) the extent, character, and objects of un-American propaganda activities in the United States, (2) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (3) all other questions in relation thereto that would aid Congress in any necessary remedial legislation." H. Res. 5, 83d Cong., 1st Sess.; H. Res. 7, 86th Cong., 1st Sess.

ambiguous that it could have no constitutional validity. This contention has also been put at rest by the Supreme Court in the *Barenblatt* decision. In the opinion, after reviewing the history of the Committee, the Court held:

"In this framework of the Committee's history we must conclude that its legislative authority to conduct the inquiry presently under consideration is unassailable [fol. 187] able, and that independently of whatever bearing the broad scope of Rule XI may have on the issue of 'pertinency' in a given investigation into Communist activities, as in *Watkins*, the Rule cannot be said to be constitutionally infirm on the score of vagueness." 360 U.S. 109, 122-123.

The quoted language is applicable here and the principle stated forecloses the appellant's contention.

We do not find any error in the judgment and sentence or in the proceedings culminating therein. The judgment and sentence are

Affirmed.

[fol. 188]

IN UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 17705

CARL BRADEN,

versus

UNITED STATES OF AMERICA.

JUDGMENT—December 10, 1959

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Georgia, and was argued by counsel;

On Consideration Whereof, It is now here ordered and adjudged by this Court that the judgment and sentence of the District Court in this cause be, and the same are hereby, affirmed.

[fol. 189]

IN UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
No. 17,705

CARL BRADEN, Appellant,
against
UNITED STATES OF AMERICA, Appellee.

PETITION FOR REHEARING—Filed December 29, 1959

Petitioner, Carl Braden, respectfully petitions for a rehearing in this matter decided on December 10, 1959.

In support of the petition, petitioner respectfully shows and alleges:

1. Petitioner had urged that his reliance upon *Watkins v. United States*, 354 U. S. 178, precluded a conviction under 2 U. S. C. § 192 and that the conviction was a denial of due process under the Fifth Amendment to the United States Constitution (Br. p. 2). This Court rejected that argument by citing *Sinclair v. United States*, 279 U. S. 263. We respectfully submit that *Sinclair* is not apposite and has in any event been overruled by *United States v. Murdock*, 290 U. S. 389 and succeeding cases as more particularly indicated in the briefs previously filed by Petitioner.

2. This Court, we respectfully submit, has erroneously construed *Barenblatt v. United States*, 360 U. S. 109 to give unlimited power of investigation over First Amend-[fol. 190] ment activities to the House Committee on Un-American Activities, herein referred to as the Committee. The distinctions urged in Petitioner's Reply Brief (pp. 1-3) appear to have been overlooked by this Court in the opinion herein.

3. The Court accepted as fact, hearsay and unsupported statements made by the Committee's Counsel which were offered to establish the foundation necessary to the

Committee's exercise of its subpoena power. We refer e.g. to the following statement in the Opinion:

"There was a close relationship shown between the appellant and Harvey O'Connor, who was known to the Committee as a hard-core member of the Communist Party. O'Connor was identified as the National Chairman of the Emergency Civil Liberties Committee which was stated to be a Communist front organization." . . . (p. 9)

4. This Court has enunciated, we respectfully submit, a most questionable doctrine that philanthropic organizations may be investigated by the Committee to determine whether they are "being used for the spread of the propaganda of a foreign dominated organization with subversive designs upon our governmental system" (Opinion, p. 9). Should such procedure receive judicial sanction it opens wide a road, presently being vigorously developed by several State Legislative Committees, to investigate as subversive (with all its accompanying damage) any organization supporting the right to racial integration as enunciated by the Supreme Court of the United States. The instant case is to our knowledge the first such use of the Federal investigative process, and to sustain it will encourage Committees purporting to exercise legislative power to discredit and destroy those agencies seeking to effectuate the supreme law of the land.

[fol. 191] 5. The Court erred in construing *Sinclair v. United States*, 279 U. S. 263, as dispositive of petitioner's right to a jury's determination of pertinency. The single directly apposite case in this decade—*United States v. Orman*, 207 F. 2d 148, was not commented upon by this Court.

6. The Court assumed that legislative purpose is proven by a mere Committee assertion to that effect (Opinion, pp. 3, 9). This assumption would eliminate the need for an actual legislative purpose previously recognized by the Supreme Court in both the *Watkins* and *Barenblatt* decisions.

7. An independent judicial analysis of the facts unaffected either by an assumption of Committee regularity or by self-serving Committee declarations would, we believe, establish that petitioner's subpoena resulted from his exercise of the constitutional right of petition relating to the Committee and to legislative projects upon which it possessed a different point of view.

Petitioner has not deemed it appropriate upon a petition for rehearing to restate the various other contentions made by him upon the appeal. He preserves every such point for reconsideration by this Court if reargument should be ordered and by the Supreme Court if a petition for certiorari should become necessary.

This is the first case involving such issues to be decided by this Court. Its importance and complexity are manifest. Related constitutional issues have been decided by a divided Court sitting *en banc* in the District of Columbia and by a divided Supreme Court, *Watkins v. United States*, 354 U. S. 178; *Barenblatt v. United States*, 360 U. S. 109. We respectfully submit that a case of first instance in this [fol. 192] Circuit might well be heard by the Court *en banc* and respectfully request that such be done.

Dated, December 28, 1959.

Respectfully submitted,

John M. Coe, Box 29, Pensacola, Florida,
Leonard B. Boudin, 25 Broad Street, New York 4,
New York,

C. Ewbank Tucker, 1625 West Kentucky St., Louis-
ville 10, Kentucky,

Conrad J. Lynn, 141 Broadway, New York 6, New
York,

Attorneys for Appellant.

CERTIFICATE OF COUNSEL

I, Leonard B. Boudin, do hereby certify that I am counsel for the petitioner herein and that this petition for rehearing is presented in good faith and not for delay.

December 28, 1959.

Leonard B. Boudin

[fol. 193]

IN UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

[Title omitted]

MINUTE ENTRY OF ORDER DENYING REHEARING—
January 12, 1960

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.

[fol. 199] Clerk's Certificate to foregoing transcript
(omitted in printing).

[fol. 200]

GOVERNMENT'S EXHIBIT No. 4

ADMITTED JAN 22 1959

Case No.: 21757

84th Congress, 2d Session - - - House Document No. 474

CONSTITUTION

JEFFERSON'S MANUAL

AND

RULES OF THE HOUSE OF
REPRESENTATIVES

OF THE UNITED STATES
EIGHTY-FIFTH CONGRESS

By

LEWIS DESCHLER, J.D., M.P.L., LL.D.
PARLIAMENTARIAN

[fol. 201]

RULE X.

STANDING COMMITTEES.

1. There shall be elected by the House, at the commencement of each Congress, the following standing committees:

§ 669. Election of standing committees.

The present form of this rule was made effective Jan. 2, 1947, as a part of the Legislative Reorganization Act of 1946. That Act consolidated 44 committees of the 79th Congress into the following 19 committees. The old rule intrusting the appointment of committees to the Speaker was adopted in 1789 and amended in 1790 and in 1860 (IV, 4448-4476). Committees are now elected on motion or resolution from the floor (VIII, 2171) and it is in order to move the previous question on such motion or resolution (VIII, 2174). The motion is not divisible (Rule XVI, cl. 6) and is privileged (VIII, 2179, 2182).

§ 670. Names and numbers of the standing committees.

[fol. 202] (q) Committee on Un-American Activities, to consist of nine Members.

[fol. 203]

RULE XI.

POWERS AND DUTIES OF COMMITTEES.

All proposed legislation, messages, petitions, memorials, and other matters relating to the subject listed under the standing committees named below shall be referred to such committees, respectively:

§ 673. Jurisdiction of committees.

[fol. 204] 17. COMMITTEE ON UN-AMERICAN ACTIVITIES.

(a) Un-American activities.

(b) The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of, (1) the extent, character, and objects of un-American propaganda activities in the United States, (2) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (3) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

The Committee on Un-American Activities shall report to the House (or to the Clerk of the House if the House is not in session) the results of any such investigation, together with such recommendations as it deems advisable.

For the purpose of any such investigation, the Committee on Un-American Activities, or any subcommittee thereof, is authorized to sit and act at such times and places within the United States, whether or not the House is sitting, has recessed, or has adjourned, to hold such hearings, to require the attendance of such witnesses and the production of such books, papers, and documents, and to take such testimony, as it deems necessary. Subpenas may be issued under the signature of the chairman of the committee or any subcommittee, or by any member designated by any such chairman, and may be served by any person designated by any such chairman or member.

This committee was established as a standing committee on January 3, 1945. It has jurisdiction of resolutions to define communism (Mar. 20, 1947, p. 2315, 2343) and also bills to protect the United States against certain un-American and subversive activities by requiring registration of Communist organizations (Subversive Activities Control Act of 1950).

[fol. 206] 25 (a) The rules of the House are the rules of it committees so far as applicable, except that a motion to recess from day to day is a motion of high privilege in committees. Committees may adopt additional rules not inconsistent therewith.

This paragraph was adopted December 8, 1931 (VIII, 2215) and amended March 23, 1955, pp. 3569, 3585.

A committee may adopt rules under which it will exercise its functions (I, 707; III, 1841, 1842; VIII, 2214) and may appoint subcommittees (VI, 532) which should include majority and minority representation (IV, 4551) and confer on them powers delegated to the committee itself (VI, 532) but express authority is given subcommittees by the House (III, 1754-1759, 1801, 2499, 2504, 2508, 2517; IV, 4548).

(b) Each committee shall keep a complete record of all committee action. Such record shall include a record of the votes on any question on which a record vote is demanded.

This provision from Sec. 133 (b) of the Legislative Reorganization Act of 1946 was made a part of the standing rules January 3, 1953, p. 24.

[fol. 207] (c) All committee hearings, records, data, charts, and files shall be kept separate and distinct from the congressional office records of the Member serving as chairman of the committee; and such records shall be the property of the House and all Members of the House shall have access to such records. Each committee is authorized to have printed and bound testimony and other data presented at hearings held by the committee.

This provision from Sec. 202 (d) of the Legislative Reorganization Act of 1946 was made a part of the standing rules January 3, 1953, p. 24.

(d) It shall be the duty of the chairman of each committee to report or cause to be reported promptly to the House any measure approved by his committee and to take or cause to be taken necessary steps to bring the matter to a vote.

This provision from Sec. 133 (c) of the Legislative Reorganization Act of 1946 was made a part of the standing rules January 3, 1953, p. 24. It is sufficient authority for

the chairman to call up a bill on Calendar Wednesday (Speaker Rayburn Feb. 22, 1950, p. 2162).

(e) No measure or recommendation shall be reported from any committee unless a majority of the committee were actually present.

This provision from Sec. 133 (d) of the Legislative Reorganization Act of 1946 was made a part of the standing rules January 3, 1953, p. 24.

The point of order that a bill was reported from a committee without a formal meeting and a quorum present comes too late if debate has started on the bill in the House (VIII, 2223; Feb. 24, 1947, p. 1374).

(f) Each committee shall, so far as practicable, require all witnesses appearing before it to file in advance written [fol. 208] statements of their proposed testimony, and to limit their oral presentation to brief summaries of their argument. The staff of each committee shall prepare digests of such statements for the use of committee members.

This provision from Sec. 133 (e) of the Legislative Reorganization Act of 1946 was made a part of the standing rules January 3, 1953, p. 24.

(g) All hearings conducted by standing committees or their subcommittees shall be open to the public, except executive sessions for marking up bills or for voting or where the committee by a majority vote orders an executive session.

This provision from Sec. 133 (f) of the Legislative Reorganization Act of 1946 was made a part of the standing rules January 3, 1953, p. 24.

(h) Each committee may fix the number of its members to constitute a quorum for taking testimony and receiving evidence, which shall be not less than two.

This paragraph was adopted March 23, 1955, pp. 3569, 3585.

Alleged perjurious testimony elicited from a witness during a period when less than a quorum of the committee was in attendance is not perjury, for under such circumstances the committee is not a "competent tribunal" (*Christoffel v. U. S.*, 338 U. S. 84).

(i) The chairman at an investigative hearing shall announce in an opening statement the subject of the investigation.

This paragraph was adopted March 23, 1955, pp. 3569, 3585.

(j) A copy of the committee rules, if any, and paragraph 25 of rule XI of the House of Representatives shall be made available to the witness.

This paragraph was adopted March 23, 1955, pp. 3569, 3585.

[fol. 209] (k) Witnesses at investigative hearings may be accompanied by their own counsel for the purpose of advising them concerning their constitutional rights.

This paragraph was adopted March 23, 1955, pp. 3569, 3585.

(l) The chairman may punish breaches of order and decorum, and of professional ethics on the part of counsel, by censure and exclusion from the hearings; and the committee may cite the offender to the House for contempt.

This paragraph was adopted March 23, 1955, pp. 3569, 3585.

(m) If the committee determines that evidence or testimony at an investigative hearing may tend to defame, degrade, or incriminate any person, it shall—

(1) receive such evidence or testimony in executive session;

(2) afford such person an opportunity voluntarily to appear as a witness; and

(3) receive and dispose of requests from such person to subpoena additional witnesses.

This paragraph was adopted March 23, 1955, pp. 3569, 3585.

(n) Except as provided in paragraph (m), the chairman shall receive and the committee shall dispose of requests to subpoena additional witnesses.

This paragraph was adopted March 23, 1955, pp. 3569, 3585.

(o) ~~No evidence or testimony taken in executive session may be released or used in public sessions without the consent of the committee.~~

This paragraph was adopted March 23, 1955, pp. 3569, 3585. *

{fol. 210} (p) In the discretion of the committee, witnesses may submit brief and pertinent sworn statements in writing for inclusion in the record. The committee is the sole judge of the pertinency of testimony and evidence adduced at its hearing.

This paragraph was adopted March 23, 1955, pp. 3569, 3585.

(q) Upon payment of the low cost thereof, a witness may obtain a transcript copy of his testimony given at a public session or, if given at an executive session, when authorized by the committee.

This paragraph was adopted March 23, 1955, pp. 3569, 3585.

26. To assist the House in appraising the administration of the laws and in developing such amendments or related legislation as it may deem necessary, each standing committee of the House shall exercise continuous watchfulness of the execution by the administrative agencies concerned of any laws, the subject matter of which is within the jurisdiction of such committee; and, for that purpose, shall study all pertinent reports and data submitted to the House by the agencies in the executive branch of the Government.

This provision from Sec. 136 of the Legislative Reorganization Act of 1946 was made a part of the standing rules January 3, 1953, p. 24.

[fol. 211]

GOVERNMENT'S EXHIBIT No. 5

ADMITTED JAN 22 1959

Case No. 21757

RALPH R. ROBERTS
CLERK

OFFICE OF THE CLERK
HOUSE OF REPRESENTATIVES
WASHINGTON, D. C.

I, Ralph R. Roberts, Clerk of the House of Representatives, do hereby certify that the following Members constitute the Committee on Un-American Activities of the House of Representatives as is evidenced in the Journal of the House of Representatives of January 10, 1957, January 16, 1957, and January 16, 1958: Francis E. Walter (Chairman), of Pennsylvania, Morgan M. Moulder, of Missouri, Clyde Doyle, of California, Edwin E. Willis, of Louisiana, William M. Tuck, of Virginia, Bernard W. (Pat) Kearney, of New York, Donald L. Jackson, of California, Gordon H. Scherer, of Ohio, and Robert J. McIntosh, of Michigan.

(Seal)

In witness whereof I hereunto affix my name and the seal of the House of Representatives in the City of Washington, District of Columbia, this fourteenth day of August anno Domini one thousand nine hundred and fifty-eight.

/s/ RALPH R. ROBERTS
Clerk of the House of Representatives

[fol. 212]

GOVERNMENT'S EXHIBIT No. 6

ADMITTED JAN 22 1959

Case No. 21757

RALPH R. ROBERTS
CLERKOFFICE OF THE CLERK
HOUSE OF REPRESENTATIVES
WASHINGTON, D. C.

I, Ralph R. Roberts, Clerk of the House of Representatives, do hereby certify that the attached is a true and correct excerpt from the Minutes of the Committee on Un-American Activities of the House of Representatives of the Eighty-fifth Congress, of May 21, 1958.

(Seal) In witness whereof, I hereunto affix my name and the Seal of the House of Representatives, in the city of Washington, District of Columbia, this fourteenth day of January, anno Domini one thousand nine hundred and fifty-nine.

/s/ RALPH R. ROBERTS
Clerk of the House of Representatives, US

[fol. 213]

COMMITTEE ON UN-AMERICAN ACTIVITIES
May 21, 1958

The Committee on Un-American Activities met in executive session on Wednesday, May 21, 1958, in Room 225, Old House Office Building at 10:00 A.M., pursuant to notice. The following members were present:

Francis E. Walter, Chairman	Gordon H. Scherer
Morgan M. Moulder	Robert J. McIntosh
Clyde Doyle	
William M. Tuck (entered at 10:25 A.M.)	

Also present were Richard Arens, Staff Director; Frank S. Tavenner, Jr., Counsel; Gwendolyn L. Lewis, Administrative Assistant to the Staff Director; and Juliette P. Joray, Recording Clerk. Mr. Walter Besterman, Legislative Assistant to the Subcommittee on Immigration and Naturalization was also present.

BE IT RESOLVED, that a hearing by the Committee, or a subcommittee thereof, to be held in Atlanta, Georgia, or at such other place or places as the Chairman may designate, on such date or dates as the Chairman may designate, be authorized and approved, including the conduct of investigations deemed reasonably necessary by the staff in preparation therefor, relating to the following subjects and having the legislative purposes indicated:

1. The extent, character and objects of Communist colonization and infiltration in the textile and other basic industries located in the South, and Communist Party propaganda activities in the South, the legislative purpose being:

(a). To obtain additional information for use by the Committee in its consideration of Section 16 of H.R. 9352, relating to the proposed amendment of Section 4 of the Communist Control Act of 1954, prescribing a penalty for knowingly and wilfully becoming or remaining a member of the Communist Party with knowledge of the purposes or objectives thereof; and

(b) To obtain additional information adding to the Committee's overall knowledge on the subject so that Congress may be kept informed and thus prepared to enact remedial legislation in the National Defense, and for internal security, when and if the exigencies of the situation require it.

2. Entry and dissemination within the United States of foreign Communist Party propaganda, the legislative purpose being to determine the necessity for, and

advisability of, amendments to the Foreign Agents Registration Act designed more effectively to counteract the Communist schemes and devices now used in avoiding the prohibitions of the Act.

[fol. 214] 3. Any other matter within the jurisdiction of the Committee which it, or any subcommittee thereof, appointed to conduct this hearing, may designate.

Signed: Francis E. Walter
Chairman

Signed: Juliette P. Joray
Clerk

[fol. 215]

GOVERNMENT'S EXHIBIT No. 7

ADMITTED JAN 22 1959

Case No. 21757

RALPH R. ROBERTS
CLERK

OFFICE OF THE CLERK
HOUSE OF REPRESENTATIVES
WASHINGTON, D. C.

I, Ralph R. Roberts, Clerk of the House of Representatives, do hereby certify that the attached is a true and correct excerpt from the Minutes of the Committee on Un-American Activities of the House of Representatives of the Eighty-fifth Congress, of January 22, 1957.

(Seal) In witness whereof, I hereunto affix my name and the Seal of the House of Representatives, in the city of Washington, District of Columbia, this fourteenth day of January, anno Domini one thousand nine hundred and fifty-nine.

/s/ RALPH R. ROBERTS
Clerk of the House of Representatives, US

[fol. 216]

COMMITTEE ON UN-AMERICAN ACTIVITIES
January 22, 1957

The Committee on Un-American Activities met in executive session on Tuesday, January 22, 1957, in room 225 House Office Building. The following members were present.

Francis E. Walter, Chairman	Bernard W. Kearney
Morgan M. Moulder	Donald L. Jackson
Clyde Doyle	Gordon H. Scherer
Edwin E. Willis	Robert J. McIntosh

Also present were Richard Arens, Director; Frank S. Tavenner, Jr., Counsel; and Juliette P. Joray, Clerk.

On motion of Mr. Doyle and seconded by Mr. Jackson, the following resolution was unanimously adopted:

BE IT RESOLVED, That the Chairman be authorized and empowered from time to time to appoint subcommittees, composed of three or more members of the Committee on Un-American Activities, at least one of whom shall be of the minority political party, and a majority of whom shall constitute a quorum, for the purpose of performing any and all acts which the Committee as a whole is authorized to perform.

(Signed) Francis E. Walter
Chairman

(Signed) JULIETTE P. JORAY
Clerk

[fol. 217]

GOVERNMENT'S EXHIBIT No. 8

ADMITTED JAN 22 1959

Case No. 21757

RALPH R. ROBERTS
CLERKOFFICE OF THE CLERK
HOUSE OF REPRESENTATIVES
WASHINGTON, D. C.

I, Ralph R. Roberts, Clerk of the House of Representatives, do hereby certify that the attached is a true and correct copy of an Order issued by Francis E. Walter, Chairman, Committee on Un-American Activities of the House of Representatives of the Eighty-fifth Congress, under date of June 24, 1958, appointing members of a subcommittee, the original of which is in an order book, part of the files of the House of Representatives which are under the control of the Clerk.

(Seal)

In witness whereof, I hereunto affix my name and the Seal of the House of Representatives, in the city of Washington, District of Columbia, this fourteenth day of January, anno Domini one thousand nine hundred and fifty-nine.

/s/ RALPH R. ROBERTS
Clerk of the House of Representatives, US

[fol. 218]

June 24, 1958

To: Mr. Richard Arens
Staff Director
House Committee on Un-American Activities

Pursuant to the provisions of law and the rules of this Committee, I hereby appoint a subcommittee of the Com-

mittee on Un-American Activities, consisting of Representative Edwin E. Willis, as Chairman, and Representatives William M. Tuck and Donald L. Jackson, as associate members, to conduct hearings in Atlanta, Georgia, Tuesday, Wednesday, and Thursday, July 29, 30, and 31, 1958, at 10:00 A.M., on subjects under investigation by the Committee and take such testimony on said days or succeeding days, as it may deem necessary.

Please make this action a matter of Committee record.

If any Member indicates his inability to serve, please notify me.

Given under my hand this 24th day of June, 1958.

Signed: Francis E. Walter

Francis E. Walter

Chairman

Committee on Un-American Activities

[fol. 219]

GOVERNMENT'S EXHIBIT No. 10

Clerk's Note

In lieu of printing Government's Exhibit No. 10, counsel have stipulated that one refer to and use the printed pamphlet identified as Government's Exhibit No. 1, page 71 of the printed record in the case of *Frank Wilkinson v. United States*, No. 37, October Term, 1960.

[fol. 220]

GOVERNMENT'S EXHIBIT No. 11

ADMITTED JAN 22 1959

Case No: 21757

RALPH R. ROBERTS
CLERKOFFICE OF THE CLERK
HOUSE OF REPRESENTATIVES
WASHINGTON, D. C.

I, Ralph R. Roberts, Clerk of the House of Representatives, do hereby certify that the attached is a true and correct copy of the Minutes of a subcommittee of the Committee on Un-American Activities of the House of Representatives of the Eighty-fifth Congress, of August 8, 1958.

(Seal) In witness whereof, I hereunto affix my name and the Seal of the House of Representatives, in the city of Washington, District of Columbia, this fourteenth day of January, anno Domini one thousand nine hundred and fifty-nine.

/s/ RALPH R. ROBERTS
Clerk of the House of Representatives, U.S.

[fol. 221]

COMMITTEE ON UN-AMERICAN ACTIVITIES
August 8, 1958

The subcommittee of the Committee on Un-American Activities, composed of Messrs. Edwin E. Willis, Chairman, William M. Tuck and Donald L. Jackson as associate members, appointed by the Chairman as a subcommittee to conduct hearings in Atlanta, Georgia beginning July 29, 1958, met in the Old House Office Building, Room 225, on August 8, 1958, at 10:00 A.M., pursuant to notice.

The following members were present:

Edwin E. Willis, Chairman Donald J. Jackson
William M. Tuck

The subcommittee was called to order by the Chairman who stated the purpose of the meeting was to consider what action the subcommittee would take regarding the refusal of certain witnesses to answer material questions propounded to them in the course of the hearings conducted by the said subcommittee in Atlanta, Georgia, beginning on the 29th day of July, 1958, and what recommendation it would make regarding the citation of any such witness for contempt of the House of Representatives.

After full consideration of the testimony of the witnesses given at the said hearing in Atlanta, Georgia, a motion was made by Mr. Jackson, seconded by Mr. Willis, and unanimously adopted, that a report of the facts relating to the refusal of Carl Braden and Frank Wilkinson to answer questions before the said subcommittee at the hearing aforesaid be referred and submitted to the Committee on Un-American Activities as a whole, with the recommendation that a report of the facts relating to the refusal of said witnesses to answer material questions, together with all of the facts in connection therewith, be referred to the House of Representatives, with the recommendation that the said witnesses be cited for contempt of the House of Representatives for their refusal to answer questions therein set forth, to the end that they may be proceeded against in the manner and form provided by law.

Signed: E. E. Willis
Subcommittee Chairman

Signed: Juliette P. Joray
Recording Clerk

[fol. 222]

GOVERNMENT'S EXHIBIT No. 12

ADMITTED JAN 22 1959

Case No. 21757

RALPH R. ROBERTS
CLERKOFFICE OF THE CLERK
HOUSE OF REPRESENTATIVES
WASHINGTON, D. C.

I, Ralph R. Roberts, Clerk of the House of Representatives, do hereby certify that the attached is a true and correct copy of the Minutes of the Committee on Un-American Activities of the House of Representatives of the Eighty-fifth Congress, of August 8, 1958.

(Seal) In witness whereof, I hereunto affix my name and the Seal of the House of Representatives, in the city of Washington, District of Columbia, this fourteenth day of January, anno Domini one thousand nine hundred and ffty-nine.

/s/ RALPH R. ROBERTS
Clerk of the House of Representatives, US

[fol. 223]

COMMITTEE ON UN-AMERICAN ACTIVITIES
August 8, 1958

The Committee on Un-American Activities met in executive session on August 8, 1958, at 10:05 A.M., in Room 225, Old House Office Building, pursuant to notice. The following members were present:

Francis E. Walter, Chairman	Donald L. Jackson
Morgan M. Moulder	Gordon H. Scherer
Clyde Doyle	
Edwin E. Willis	
William M. Tuck	

Also present were Richard Arens, Staff Director, and his Administrative Assistant, Gwendolyn L. Lewis; Frank S. Tavenner, Counsel and Juliette P. Joray, Recording Clerk.

The report of the facts relating to the refusal of Carl Braden to answer material questions was submitted to the Committee upon which a motion was made by Mr. Scherer, seconded by Mr. Doyle, and unanimously carried, that the subcommittee's report of the facts relating to the refusal of Carl Braden to answer material questions before the said subcommittee at the hearing conducted before it in Atlanta, Georgia, on the 30th day of July, 1958, be and the same is hereby approved and adopted, and that the Committee on Un-American Activities report and refer the said refusal to answer questions before the said subcommittee, together with all the facts in connection therewith, to the House of Representatives, with the recommendation that the witness be cited for contempt of the House of Representatives for his refusal to answer such questions, to the end that he may be proceeded against in the manner and form provided by law.

The report of the facts relating to the refusal of Frank Wilkinson to answer material questions was submitted to the Committee, upon which a motion was made by Mr. Scherer, seconded by Mr. Doyle, and unanimously carried, that the subcommittee's report of the facts relating to the refusal of Frank Wilkinson to answer material questions before the said subcommittee at the hearing conducted before it in Atlanta, Georgia, on the 30th day of July, 1958, be and the same is hereby approved and adopted, and that the Committee on Un-American Activities report and refer the said refusal to answer questions before the said subcommittee, together with all the facts in connection therewith, to the House of Representatives, with the recommendation that the witness be cited for contempt of the House of Representatives for his refusal to answer such questions, to the end that he may be proceeded against in the manner and form provided by law.

The meeting adjourned at 10:25 A.M.

Signed: Francis E. Walter
Chairman

Signed: Juliette P. Joray,
Recording Clerk

[fol. 224]

GOVERNMENT'S EXHIBIT No. 13

ADMITTED JAN 22 1959

Case No. 21757

85TH CONGRESS.
2D SESSION

H. RES. 686

IN THE HOUSE OF REPRESENTATIVES

AUGUST 13, 1958

Mr. WALTER submitted the following resolution; which was
considered and agreed to

RESOLUTION

Resolved, That the Speaker of the House of Representatives certify the report of the Committee on Un-American Activities of the House of Representatives as to the refusal of Carl Braden to answer questions before a duly constituted subcommittee of the Committee on Un-American Activities, together with all of the facts in connection therewith, under seal of the House of Representatives, to the United States Attorney for the Northern District of Georgia, to the end that the said Carl Braden may be proceeded against in the manner and form provided by law.

(Seal) I, Ralph R. Roberts, Clerk of the House of Representatives hereby certify that the above Resolution is a true and correct copy as adopted by the House of Representatives on August 13, 1958.

/s/ RALPH R. ROBERTS
RALPH R. ROBERTS

Clerk, U. S. House of Representatives

[fol. 225]

85TH CONGRESS
2D SESSION

H. RES. 686

RESOLUTION**Citing Carl Braden for contempt.**

By Mr. WALTER

AUGUST 13, 1958
Considered and agreed to

[fol. 226]

GOVERNMENT'S EXHIBIT NO. 14**ADMITTED JAN 22 1959****Case No. 21757****SAM RAYBURN**
4TH DISTRICT, TEXAS**THE SPEAKER'S ROOMS**
HOUSE OF REPRESENTATIVES U. S.
WASHINGTON, D. C.**The United States Attorney**
Northern District of Georgia

The undersigned, the Speaker of the House of Representatives of the United States, pursuant to House Resolution 686, Eighty-fifth Congress, hereby certifies to you the refusal of Carl Braden to answer questions before a duly constituted subcommittee of the Committee on Un-American Activities of the House of Representatives conducting an investigation authorized by Public Law 601, Seventy-ninth Congress, and House Resolution 5 of the Eighty-fifth Congress, as is fully shown by the certified copy of the report (House Report 2584) of said committee which is hereto attached.

Witness my hand and the seal of the House of Representatives of the United States, at the City of Washington, District of Columbia, this fourteenth day of August 1958.

/s/ SAM RAYBURN

Speaker of the House of Representatives

(Seal)

Attest

/s/ RALPH R. ROBERTS

Clerk of the House of Representatives

[fol. 227]

SUPREME COURT OF THE UNITED STATES

No., October Term, 1959.

CARL BRADEN, Petitioner

v.

UNITED STATES

ORDER EXTENDING TIME TO FILE PETITION FOR
WRIT OF CERTIORARI—February 2, 1960.

Upon Consideration of the application of counsel for petitioner,

It Is Ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including March 12, 1960.

Hugo L. Black, Associate Justice of the Supreme Court of the United States.

Dated this 2nd day of February, 1960.



[fol. 228]

SUPREME COURT OF THE UNITED STATES

No. 779, October Term, 1959

[Title omitted]

ORDER ALLOWING CERTIORARI—April 25, 1960

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted, and the case is set for argument immediately preceding No. 703.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.